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Real Property by James Gould Esq.

By the word things is meant by Common law meant the subject of property – Two kinds – Real and Personal

Things is not not meant ~~any real~~ the interest one may have in things real but ~~in~~ the things themselves

Things real, fixed permanent and immoveable all other things are personal – but the last division includes chattels real by which is meant a personal interest in a thing real – 2 BC 16th 384th 387th 2 Wood 1th 1 Inst 118th

things real comprehends tenements and hereditaments – whatever does not fall under the legal notion is not a thing

Land includes all things of a permanent and substantial nature –

Tenements means any thing which are of a permanent nature which may be holden – corporeal and incorporeal ~~It~~ must be permanent things not substantial 1 Inst 6 – 19 – 20th 2 BC 17

Real Property

Hereditaments include whatever may be inherited - no matter whether corporeal or incorporeal -

An heir loom is some personal chattel which by custom is inheritable - this is a hereditament - so a condition the benefit of which is descendible -

3 Co. 2 2 B.C. 17 -

2 Species of Hereditaments

Corporeal and Incorporeal

Corporeal consist of substantive and permanent objects and includes whatever may be included under the word land - which includes waters buildings and structures erected on that land. Hence a conveyance of land on which stands a building conveys the building unless some reservation is made

1 Inst 4th 2 B.C. 7th & 8th 18th

No action will lie to recover a particular piece of water because it is a transient

2 B.C. 18 -

3 Real Property

Land extends upwards and downwards indefinitely (in its legal acceptations)
A conveyance of land carries with it all minerals and under as well as above wood & on or the earth 2 BC 18th
But all these conveyances may be made without conveying the land—
All that is conveyed by 'water' is a right 1 Bl 4 50 of Piscary—

An incorporeal hereditament is a right issuing out of some corporate thing (whether real or personal or concerning or annexed to or exercisable within the same—

This right of rent issuing out of land is an incorporeal right— 1 Cruise 19–20 2 BC 20th

A right of way is called a easement—
There is a difference between the right and the profit since the latter may be money and therefore corporeal— the right itself cannot be seen or touched since it is 2 BC 20 21— always invisible

4 Lo Treatise of Real Property Incorporeal ~~rights~~ hereditaments &c 6 - 21

Right of Common is a right which one has to the profit in or upon the land of another -

In the case of piscary - the soil in the navigable rivers is in the King or in the U S in these ~~country~~ several states -

But the right of fishing is common to every ~~man~~ subject -

Contra = in rivers not navigable the right of soil and the right of fishing belong to the person owning the adjoining ~~the river~~ land - these proprietors own to the middle of the river -

If a man is bounded upon ~~the~~ a navigable river his property extends to low water mark - if upon unnavigable rivers to the middle of the river.

1 Salk 357 2 B 2 164 1 Mod 105 Mod 70
3 Keb 242 - Doug 425
2 T R 437 -

The right of soil may be granted to ~~an~~ individual in a navigable river though it has seldom ever been done

Hargrave - 5 C 157 2 Bos Pul 472 - Dyer 326
Hale de jure 26 - 7

5

Real Property

The same distinction holds in the shore of the sea as in navigable as to high and low water mark— boundaries upon tho the sea are usually upon the high water mark

2 Bos Fml 272 - 5 C 107 - Dyer 326 B - Pet was took in our court of errors - Blackstone Commentaries -

Estates in lands tenements and hereditaments

Fee hold of Inheritance—

An estate is the interest one has in lands tenements and hereditaments—
It has been said that estate comprehends both land and interest - a says Lord Holt
2 Bc - 103 1 Inst 345 - 1 C R - 211

1 Way 25 & 2 J R 659 - 2 Paw Will 335 - 3 Wils 414
1 C R 213 - 214 -

The word estate does prima facie express the whole interest and subject—
It does always express the whole interest and subject unless some other words show a reservation—
The quantity of interest that a tenant has is measured by its duration—
That estate which remains the longest is the greatest and vice versa -

Real Property

And first we consider the division of Freehold of Inheritance and Freehold not of Inheritance

A Freehold is one which by common law, livery of seizin or in incorporeal property by something which is equivalent is necessary to make a legal conveyance — 2 BC — 104th Littleton sec 59th

Estates of Freehold are either of inheritance or not of inheritance

Estates of Inheritance are divided into estate of inheritance absolute and estate of inheritance limited

A estate of inheritance absolute is a fee simple to A and his heirs — 2 BC 104 — 106 —

The word fee is the same as the word land or fief which is taken in contradistinction to allodium —

A fee is always holden of some superior — Allodium estate is that which is holden of no superior — The King only holds this 2 Bl 3 — 47 — 104 — 5

7 Real Property
hence no English subject can have only the usufruct

Fee is now used to denote the continuance or quantity of estate — and not in contradistinction — Abt 2 B 106 —

Fee is used to denote any state of inheritance —
Fee and fee simple is the same in meaning
2 B 106 —

A fee in this sense may be had in corporeal or incorporeal hereditament —

Domain means the corporeal subject itself in which a person has an ~~estate~~ estate
Litt Lect sec 10th 2 B 6 - 20th - 106 7th —

General maxim — the fee simple must always abide or rest in somebody and not be in abeyance or expectance in all lands tenements and hereditaments —

2 B 6 107 and Cont Term 2 7 & 2 8 & 5
2 67th & Carthew 2 62 —

2 Lecture — Wednesday November 20th 1811

Fee simple can never be in abeyance but must vest in some person —
If a grant is made to a corporation and their successors says Blackstone the fee simple is in abeyance — not so

nisi ~~[illegible]~~ [illegible]
says Gould— If a grant is to A and
his heirs—the heir is not known but
in the latter case it is not in abeyance.
The *whole* is given to the corporation
thereupon the whole fee is ~~[illegible]~~ vested in
the corporation and ex vi termini
there can be no abeyance—

2 B C 107 Littleton sec 646.

And if it is not wholy given it resides
in the grantor and so is not in abeyance
since it vests in some person
viz the *Grantor*—

Again—says Blackstone the freehold
is in abeyance ~~[illegible]~~ after the death
of the parson before his successor
is named—but in this case says
Gould it reverts back for the time
being to the Grantor—yet the
parson after ~~[illegible]~~ his induction
may recover back all the rents
&c that arise during the vacancy—
From whence it appears it could not
have been in abeyance.

1 Real property — 'heirs' indispensable word
In the creation of a fee simple or in any estate of Inheritance the the indispensable word is heirs — this word is in the legal sense a necessary limitation, and is the only word in a grant which expresses the quantity of estate
~~The word heirs~~ by common law
The word heirs is not necessary to show any right in the purchase to them i.e. heirs but to show what quantity of estate the ancestor takes
A grant to A and his assigns or his assigns forever is only an estate for life —
This arises from a feudal strictness since the grant was always supposed to be made for some personal service of the Grantee himself and so would never extend further unless expressed in the grant
2 B C 56-107-108 — Littleton sec 1 —
But where the word heirs is used, the words of perpetuity are not necessary to make an estate in fee — though such is usually added in all deeds or grants — some authorities
But the same rule does not hold

10 Real Property - the word heirs necessary -
as to Devises - here more liberality is
shown in the construction - and is
grounded upon the favour which the
law allows to a mans last will and
testament - since a man often devises
"in extremis" -
Thus the Grant "I give to A black
acre in fee simple conveys only
a life estate - but in devises it is
for life A conveys an estate of inheritance in fee -
Cowp 659 - 2 BC 108 - 1 Inst -

If in a grant a man gives to A forever
black acre - this is only a life estate
but if one devises to A forever to
A it gives a fee simple -
Yet a devise without words of per-
petuity conveys ~~only~~ a fee
~~an~~ life estate -
Life estates are assignable as well
as fee simple estates - 2 BC 108 -
Again ~~[redacted]~~ "I give and devise all
my estate," having myself an estate
in fee simple I give an estate in
fee simple - Salk 236 Cowp 659
1 Ves 412 - 2 Ves 634 - 21 Ves 485 & 502

11 Real Property – the words heirs – Estate, forever – assigns
6 do 34 – 67 – 502 Comp 300 –

The word "all" includes all the interest
the testator has in the estate –
Thus the words "I give all my estate"
gives all I have be it more or less.
a fee simple or fee tail –
It has been holden that "all my estate"
comprises with a local description gives
and conveys only the subject – but
the authorities differ from this and
consider it as nothing less than an
inheritance – 1 Ves Jr 411 – 2 Atkins 394
1 Ves 228 – Comp 855 – 2 Ves Jr 524
2 Ves 534 –

"I give all my estate in the occupation of
A to B – this carries Old Ward with
conveys only the a life estate –
because he gives only what A possesses
viz a life estate or in what his own
words – in the occupation of A –

Witton v Witton of Warwicke

1 Ves 228 – 9

"All my real effects" denotes the whole
estate – C 259 1 East 3 – 3 East 516

12
2 Ven R 343 Real Property - "legacy" "lands" "worth" &c
So says Ld Thurlow - "I give all I am worth" gives a fee simple if I have a fee simple because I give all I have - 1 Bro Chan 437 . 8 TR 66 n

So legacy in Devises may signify a real estate and when the words are manifest may convey a fee simple.
Douglass 39 1 Pow Will 182
1 Bur 268 n 1 East 33 note - 2 TR 718 n

It has lately been Qd whether "hereditaments" conveys an estate in fee
Mr Gould thinks not -
because the word denotes only the right ~~in the thing~~ and not ^the property in the thing itself.
2 TR 558 n - 3 TR 356 n - 6 do 175 n 8 do 497
1 Bos & Pul 558 n

I give and devise ^all my lands to B he paying a gross sum (^to A 500£) this will convey a fee simple - because otherwise he might be a looser as he might pay today 100£ and die tomorrow - if he took ^an estate only for life he would loose

18) Real Property
Fund on Devises &c and onward Atkins 2 81 2 91 –
3 Atk 49th 1 Bos & Pul 30 3 Burrows 623 3 Term R 305 –

But if one devises thus "I devise my land to B he paying 100£ out of the profits" conveys only a life estate – and this differs from the former in that B cannot be a looser as the sum to be paid comes out of the profits –

2 Ven R 324, 3 – Comps 239
5 – East 87th

And if one devises land "eo nomine" to of a certain value, provided the devisee pays an annuity less than the annual value it conveys only an estate for life for the same reason as before –

6 Ve 105 – 7 R 133 – 3 B 1533 – 16 T R 1023 – 2 B & R 81 –

But if the devisee pays a greater annuity than the annual value of the land he would have taken a fee – else he might be a looser which is not to be supposed – this rule is drawn from analogy by Gould

Thus much for exceptions to heirs in devise

13/ Another exception in fines and recovery — Real property — technical words —
the word heirs is not necessary to convey
a fee because the fee is made by actual
operation of law

2 Bl 108 — 354 357

So in grants to sole Corporations —
the word heirs is not necessary nay
it is improper — successor is the proper
word — because the word heir would
give the inheritances to the heirs of the sole cor
2 Bl 108 porator himself
So to a Corporation aggregate the words
'heirs' and 'successors' are useless
because when one grants to another
without any limitation the law presumes
the Grantee to hold during life but
a Corporation lives forever "ergo"

1 Bl 484 2 Bl 109

A grant of land to the King — will convey
a fee simple unless restricted — and
for the same reason as in aggregate

... [illegible]

Conporation Le neverdeis – Real Property

1 B 6 2 4 9 – 2 B 6 1 0 9 –

Inquiries connected with the word heirs

Gen. rules –

1 Heirs is a general word of limitation

2 If an estate is limited to A for life with remainder to his heirs for life A takes a fee simple – but if it was to the heirs of his body he takes only an estate tail – but this defeats the intention of the grantor –

To A for life – remainder to B – remainder to the heirs of the A – A takes a fee subject to the intermediate remainder –

To A for life – remainder to B – remainder to the heirs of the body of A – A takes an estate tail subject as above to the intermediate estate –

To A for life remainder to his heirs – A fee simple vest immediately in possession in A –

15) But [illegible] A for life — remainder to B — remainder [Real Property]
to the heirs of A — here A takes a fee in
interest and cannot have an fee in possess-
ion untill B's remainder is extinguished
1693 104th 105th Term 21st and onward 42 — 46
79–82 90–92 101–7 102–125 "29411 674 4th
82 294. 7th 533 — Hardraws tracts —
Because says — Gould "Heirs" is used as a limita-
tion and conveys a quantity of estate
equal to inheritance — But if you con
sider the word heirs as a discription
of the person or a word of purchase the
heirs of the Grantee can take only an
estate for life —
Genl rule — when the word "heir" is used
without any other words — as to "A and his
heirs" ~~this~~ tis a word of limitation
but when it is coupled with other
words as "to A and the heirs of his
body" this is descriptive of the person
~~the~~ first conveys a fee the latter a
life estate only

If a devise is made to the heirs of A, this conveys no estate to the heirs unless A dies before the testator this creates an estate called a contingent remainder

2 Bent 313th T Ray 833 Comp 813-14th

But if in a devise, the word heirs is used or accompanied with such other words as show, that the word heirs was discriptive of the persons or as a word of purchase the heirs may take as heir—

e.g. A devises to the heirs of A now living

2 BR 1010th C Ray 330 1 PWms 29th 1 Bent 421th

2 Bur 1100 — 2 Lev 232d 1 Bent 343

An estate given to a man and his heirs cannot be ... abridged of any of its legal qualities — this means an estate in fee simple—

e.g. A devise to B in fee provided that B shall never aliene or devise it the provision all null and void

1 Inst 13th & Th 61st Doug 329th

Real Property. Kinds of Estate of fee
Fee simple - Base fees - and fee tail
Limited fees are such estates of in-
heritance as are clogged with some
qualification

2 kinds - 2 qualified - base fee and fees conditional which have become by the statute De Donis estates tail

B

A base fee is one which has some
qualification annexed to it and
must determine when the qualifi-
cation determines -

1 Inst - 2 Bl 109 -

A fee conditional by law is one which
is restrained to some particular
heirs of the grantees body -
This by common law is descend
able to his issue -

2 Bl 109 -

This is so called because of the con-
dition, which attends the donee or grantee
This without having the land vests

19 Real Property
Back to the Grantor

Plowd 241   It is decided [has been]

In the construction of this grant, that if the the grantee had issue the condition in some respects was performed as to

1 If he had issue it became absolute so as to enable him to aliene and so deprive the Grantor

2 For the purpose of subjecting the estate for forfeiture for the treason of the Grantee

3 So as to bind the issue and encumber the land   1 Inst 19th 2d and 233 4th

But not absolute as to all purposes for if the Grantee had issue and did not aliene and the heir died before the Grantee the land will revert to to Grantor —

2 Bl 110th 111th

If he died leaving issue it converted the fee into absolute

 Real Property - statute de donis -

But the three before mentioned rules ~~the~~ were a shire invasions of the will of the grantor hence arose the Statute de donis which enacted that the will of the grantor should be observed and if there were no heirs ~~the~~ the land should revert back and so could not be aliened—

In the construction of this statute the judges held that the birth of heirs was no performance of the condition— and that the interest ~~was~~ was to be divided into three binds parts or three—

1 ~~to the~~ a life estate to the grantee
2 estate tail to his heirs—
3 remainder expectant on the failure of heirs ~~in~~ to the grantor

2 B C 112 – 2 Lovy 180 – 3 Brom Cha 320

The ~~estail~~ estate tail originated in the statute de donis and was unknown ~~by~~ to the common law— Lill[illegible] sect 13th

2/ Real Property
The only word in ~~the word in~~ the statute which denotes the subject of the property is tenement hence a fee tail can be made in all real property and in some incorporeal property
No annuity admits of being limited in fee tail — because this charges only the person of the grantor and is not a tenement 1 Inst. 19-20-2 B C 113
No remainder ~~is~~ can be limited after an annuity
2 Vesey 290- 1 B Chan 325
Co. on L 19-20-
A mere personal chattel cannot be entailed for if one grants a personal estate to A and his heirs of his body A has ~~an~~ ~~one~~ legal right to it absolutely —
2 B C 113th- 174th 398th- 1 Brown Ch 274
Pow on Dev 243- Fern on Con R 304-5-3 P W 259-
The rule that a chattel personal cannot be entailed is only true where the thing is limited-
Words in ~~an~~ limitation of an estate real which by ~~constru~~ implication ~~tion~~ will create an estate tail

22 Real property
will in in personal chattels creates re-
mainder in these chattels after a
life estate — and this arises from the
law of executory devises —

Plowd 3 Pr Wms 259 4 P Wms 53
1 Bos & Pul 215 2 Ves 398

An estate tail may be created by implication —
As limitation to A and if he dies without
heirs remainder to B —
But an estate tail is never created by im-
plication in a deed though it may be
in a devise —

3 Ves 98 — 1 P Wms 575 3 Atk 698
Carth 343 2 Bac 681 1 Comyns 234

If A devises to B and his heirs, forever
and if he dies without heirs remainder
to C — here B takes an estate tail —
because here the word heirs is not
used in their proper meaning.

2 Ves 270 Fearn 170 302 —

And if a man devises to A and his
heirs forever but if he dies without
heirs remainder to B — here A takes
an estate tail if B is collateral heir

28 Real Property diff. kinds of estate –
because heirs here means heirs general

Con 234 5 Th. 336 – 3 Th. 145 – 6th 5 Th. p. 307
8 Th. Do 211

General or Special estate tail –
also tail male General – tail female
General – tail male Special; tail
female special –
In the case of limitation of tail male – the descent
must be deduced by or through heirs male wholy,
and so on the contrary in the case
of limitation of tail female the descent
must be deduced through the ~~ma~~ female
Little text on 24th C litt 25th
also on Cruise on real property
which in my umble opinion is far
superior to any other treatise extant –

22d.
the word body or some other word of appropriation is necessary to create an estate +
tail – 'heirs of the body' confine the heirs
to a particular descent –
1 Inst 20th 2 B 6 114 – 15 3 81

If therefore words of inheritance & words of ~~appropriation~~ procreation are omitted, a fiction will not pass —

\+ Thus a grant to A and the issue of his body does not create an estate tail or to A and his seed or to A and his children or to A and his offspring — in all these cases A will take only an estate for life

2 B C 115 1 Inst 20th

But Contra — A grant to A and his heirs male conveys to A a fee simple because there is no words of appropriation —

Heirs male do not mean ~~general~~ heirs —
And therefore you cannot convey to A and his heirs male or heirs female for this is unknown at law — The heirs male and female is by construction considered too superfluous this passes a fee

2 B C 115 Litt sect 31 1 Inst 27a

25th Real Property — words necessary to create an estate tail

5 T R 638th

The words must be taken most strongly against the Grantor and upon this principle the court construed the aforementioned grants

A grant to the King and his heirs male or female is void because you cannot unite 5 T R 565 the words strongly against but for the King

But A. devise in the same words viz to A and his heirs male will convey a fee tail — because this seems to be the intention of the testator 5 T R 558th Doug 622

2 B C. 110th B 81st

Now by devise and estate in law maybe created without the word heirs. Thus to A and his posterity convey a fee tail —

1 Hen b 447th 2 B 6-881st

the word Children

Devise to A and his children, A having no children at the time

 words necessary to create an estate tail
of the devise A takes and estate tail –
because it is manifest that the children ~~cannot~~ should take an estate some way or other – they cannot take as joint tenants nor in remainder – not as joint tenants because they are not in esse nor as remainder men because this was evidently contrary to the intention of the Grantor –

6 C 17 A – 2 B C 115 Doug 509-10 1 Bl 219
1 Vent 227-231 1 Hen B 2,56-2,57 –

But under "A devise to A and his children he having children" they take as joint tenants with the father A – in the former case they could not take in the same manner because they were not in ~~esse~~ esse

6 C 16 B 17 B Cro Eliz 743 1 East 262

Only the children that are in esse can take as joint tenants –

Comyn 314 1 Bro 124

Contra – one Devise to A and after his death to his children he then

takes an estate for life and they take a life estate in remainder as purchasers since the words in this case is a word of purchase

6 C 16 B — Moore 397" Cole 4th 9 a

2 Vern 545 — Doug 506

In this case the afterborn children will take in remainder with those that were in esse at the time of the Devise

because in this case the estate is not to be given as an immediate estate but as a remainder which seems to be intended to included the afterborn heirs —

Con p 309 314 — in point or relative —

A devise to A and after his death to his children he having no children in esse the rule is the same — all the children will take in remainder after the life estate of A —

6 C 17 A and B — Moore 220 — Con p 314

2d whether in this case A would not take and estate tail — Douglas 415 and onward — but the rule is as laid down above

28 Real Property – estates tail – heirs female &c –
If an estate is limited to A and the heirs female of his body the female will take an estate tail though he has a son and he is in reality only heir

1 Inst 24 B / in the legal sense of the word

says Coke

If limited to A and the heirs female of A as purchasers and A has a son the son will inherit it, in exclusion of the females – this is not law – they will take says Gould – 8 times argued and decided in favour of the females

for the old rule 1 Inst 22, B 2 Bl. notes at Hob 29th / Freeman 216th 3 Salk 336th 2 P.Wms in Chan 54 Eliz 32 147th –

new rule 1 Inst 164 A note 2d 5 Burr 2615 1 Font 422 –

The latter decisions seems to be liberal and right says Gould.

– Incidents to tenants in tail

1 not liable for waste –

2 the widow of the tenant entitled to Dower

3 the Husband is entitled to curtesy

4 May be barred by fine or recovery or by a lineal warranty descending on assets to the heir in tail

Litt 224- 2 B 615-116- 2 B C 634-

2 B C 600-3-

Fine declared to be barred by common recovery in Edward 1st reign

In Hen 8th for feitable by treason

Do for fine —

The tenants right to suffer a recovery or fine is inseparable from the estate — and all restraints to the contrary are null and void

2 Pr 603-4 & 605

In Con. we cannot suffer a fine or a recovery because we have a statute which vests a fee simple in the immediate reversioner of the first donee —

Litt Con 413

This is exactly like an estate conditional at common law —

30 Real Property — Freeholds not of inheritance — 4th
2 Freeholds not of inheritance —

Always an estate for life or lives —

and are either conventional (by the act of the parties) or legal (by operation of law) 2 B C 120

Conventional estates may be for one man's life or the life of another or for more than one life

Legal estates are only for the life of the tenant only —
2 B C 120

Per auter vie — means when one holds land during the life another —

Cestique vie means the person during whom life is held
Litt tenures 5th

A life estate cannot at Com Law be conveyed or [illegible] without livery of seisin (that is in conventional estates)
Litt tenures 59 — 2 B C 104 — 120th

A grant to one not limiting any thing in the estate always passes

Real property - Freehold not of Inh. - what creates it. Sect. 3 1
an estate for the life to the grantee

1 Inst 42 2 Bl 121st

If a grant for a life is given it is construed for the life of the grantee - because his own life is more valuable to himself than any other life - and the rule is it must be construed most favourably for himself -
1 Inst 36 42 2 Bl 121st

Any estate having no determinable duration, which may last during the life of the tenant or grantee is a life estate - (estates of inheritance - of sufferance or at will [illegible])

A grant to A untill he leaves the realm or A grant to B during widowhood is a grant for life

2 Bl 121st 1 Inst 42

3 C 20th

At Common Law - An estate to A for life may be determined by his civil death
But A grant during his natural life does not determine by his civil death -

82 Real Property Law
2 C 48 1 Inst 132a - 1 B C 121 b - 132 a

Incidents to life estates are

1 The tenant without restraint may take reasonable estovers by common right; that is wood to repair buildings for fuel for fences and to repair hedges & ditches

2 B.C. 35 s. 122 Co Litt 41-53

2 Not to be injured by any sudden determination of his estate unless by his own act - eg if he sows crops and dies - the emblements go to the representatives of the tenant for life -

Inst add the reg. matter

By emblements are meant fruits of land produced by annual labour - if a tenant for life dies before cutting hay the hay is not emblements nor is fruit but sown crops are emblements -

If A holds a life estate during the life of B and B dies between the sowing and reaping of crops A is entitled to emblements because the universal maxim is "actus dei facit injuriam nemini"

The rule is the same if the estate is determined ~~if~~ ~~not~~ by law during the sowing and reaping - because - actus legis facit injuriam nemini 5 C. 116

But if a tenant forfeits his estate during his own life he is not entitled to emblements - e.g. if he commits waste which works a forfeiture

1 Inst 55th - 2 Bl 122 -

The under tenants have still greater indulgences -

If a widow has an estate during widowhood and leases to A - and the widow marries between the sowing and reaping - still the under tenant shall be entitled to emblements since his estate was not determined by his own act but by the act of the widow -

Cro. Eliz 2.61st - 1 Roll 727th - 2 Bl 124th

If any tenant for life ~~[illegible]~~ underlets for ~~life~~ years - the term determines on the death of the tenant for the

tenant for life unless the lease is confirmed by the reversioner — and it is usual to purchase the confirmation —

If a tenant for life makes a lease of 1,000 years — still the lease is good so long as the lessor lives, since it is wholly uncertain how long he will live.

Litt. sec. 516 — Poss. 115th. — 3 Bac. — 397th
Comp. Dig. 182 — 1 Thr. 80th

Thus far of conventional estates —

next kind — are — by operation of law

3 kinds —

1 tenants in tail after pos. issue extinct
1 tenants by curtesy and
3 tenants in Dower —

The 1 case arises where a special estate tail has been limited to some person who has died without issue or is without possibility of issue —

Thus to A and the heirs of his body by his wife B — B dies without issue here A remains tenant in tail

36 Real Property - incidents to estates by life &c
in case after possibility of issue
is extinct -

Littleton sec 32 2 BC 124 ff

This estate cannot be created by
grant - it can only be created by
the death of the body the person from
whom the issue was to come or after
the possibility of the issue is extinct -

2 BC 125 ff -

An estate is limited to A and B and
the heirs of their bodies be gotten and
they are divorced a vinculo matri-
monii - they become afterwards
only tenants in for life because they can
have no issue unless there is marriage

1 Inst 28

For law always supposes the possi-
bility always to exist till the death of
one of the parties however old they may be

Litt sec 34 - Co. Litt 28 -

A tenant in tail partakes partly of the nature of an estate tail and partly of the nature of an estate for life - A resembles a tail tail in as much as they can commit waste - He resembles an estate for years in as much as an estate of his possession cannot be forfeitable by granting a fee simple or fee tail

1 Inst 2 8th 2 B C 125th

Not liable for waste - but if he does commit waste by cutting timber the timber does not belong to him but the person who has the first inheritance of that land -

A grant an estate tail to A - remainder to C in tail who is not in esse - remainder to B in fee - here C is entitled to the emblements - I believe I have taken this wrong and it should be remainder to B - remainder to C in fee not in esse -

2 Bac Ab 240

A tenant in tail after poss. is entitled regarded only as a tenant for life and may exchange interest with a tenant for life -

A deed of exchange cannot be made but by parties who have co-equal

38 R Prop- estate by Curtesy
equal interest- that is they must take of the same
kind though of different value- eg a fee to fee
2 Bl C 126-323- estate for life for ancestate pur vie
2 Spins: by the courtesy of England-
When a man marries a woman seised
of an estate of inheritance and has issue
born alive and capable of inheriting
he surviving her is tenant by
the Curtesy of England-
Litt sect 35-52 -
2 requisites to create an estate by Curtesy
1 Marriage
2 Issue of the lands
3 Issue
4 Death of the wife
Marriage must be legal - else there
can be no husband in law
2 Bl C 127th
Issue must be actual born in the wife at
the time of her death
A mere constructive seizin does
not entitle the husband to Curtesy

Real Property – Curtesy

for an estate the issue could not inherit in which there never can be curtesy –

Co Lit 29 – 40 –

has been decided by the supreme court of errors that actual seisin by the wife is necessary in Conn. this is departure from common law

Hence a husband cannot be entitled to curtesy of a remainder and reversion because here the wife has not had livery of seisin –

2 B & C 107 – 1 Dan 429

If the wife is an idiot no curtesy to the husband – because says Blackstone the land belongs to the king – the reason here is in truth because the husband being non compos could not enter into matrimony and so not be husband

3 Mod 263 – Co Lit 180 a 2 B & C 127 – 180

The issue must be born alive else it cannot inherit – and where the issue cannot inherit the husband cannot have curtesy –

2 Co Lit 84 Litt sec 26 Dyer 26

Real Prop— Curtesy— Jan 5th

The issue must be born during the life of the wife - if it is born by the Cæsarean operation and the wife dies before the child is produced here even though the child lives the husband cannot have curtesy

Cok Litt 29-2 Bac Ab 127-8th-

The issue must also be capable of inheriting the estate— the probable cause of curtesy is that the husband having the education of the children under his care should have the means of defraying the expences.

If the wife has an estate tail male and has a daughter only— the husband cannot have curtesy because the issue could not inherit However it is of no consequence whether the child is born alive or dead the issue of course— It matters not neither whether it be dead or alive at the time of issue the same— its death before the death of the mother the wife does not bar the Power

Cok Litt 29

Curtesy may be had in a mortgage by equity of redemption

1 Atk 603 - Powel on mort 112"

He is in curtesy by ~~curtesy~~ the birth by initiation but not consummate before the death of the wife of such issue

2 B C 138 - Coke on Litt 30"

Tenancy in Dower

If a husband seised of an estate of inheritance dies his widow has a life estate of one third part of his lands of which he is seised during the coverture and see capable of being inherited —

2 B C 129"

She must have been his ~~actual~~ wife at the time of his death if the man have been divorced a vinculo matrimonii she is barred of her dower

2 B C 130"

A divorce a mensa et thoro does

not prevent the wifes dower because they remain man and wife in the case of the lesser divorce a mensa et thoro matrimonii

2 Bl c 130th

If the husband is an idiot perhaps no dower

Co Litt 31 2 Bl c 130th

By the antient common law the Dower was forfeited by the husband's treason and felony but by statute 1 Edward 6th the widow was only barred by the husband's treason and not for his felony

2 Bl c 130-131

In this state the treason and felony of the husband does not work a forfeiture of the estate except during the ~~wife~~ life of the treasoner

The Constitution declares that treason in the husband shall not bar the widow of her right of dower

Art 8 sec 3

An alien can never be endowed but by statute — in some states an Alien

is permitted to hold lands by particular statutes – not in Connecticut however
2 B C 131 1 Inst 31st

The widow must be 9 years old at the husbands death else she cannot have dower 2 B C 131st

The estate in which she claims dower is such as the issue which by possibility she might have had could have inherited – Litt sect. 38–53 – 2 B C 131st –

The estate must be such as the issue could by possibility have inherited –

If the husband is seis~~ed~~ in law it is sufficient to give the wife dower or right of the present possession of the freehold. This is a legal or constructive seisin –

In the case of curtesy actual seisin was necessary to create ~~in~~ curtesy –

The reason of the difference in the two cases seems to be this – because the husband had the liberty and power to take seisin at any

time if he would - whereas in the case of Dower she is not supposed to have the power of entering upon the lands and taking livery of seisin -
Cro. Eliz. 503 - 2 Bl. 131 - Co. Litt. 31

A seisin of the husband, for any period of time however short is sufficient to constitute the wife dower -

But where the husband is a conduit pipe and has a transitory possession this will not constitute it a right to Dower -
Co. Litt. 31 Cro. James 615 - 2 Bl. 132

If at Com law the husband aliens the land during coverture the wife has dower -

Under our statute she is entitled only to one third part the lands the husband died seised of in fee -

In England she is not entitled to an equity of redemption in a mortgage estate - because this is considered as a trust estate - but the husband has curtesy in the wife's equity of redemption, why is this difference it is merely arbitrary, says Gould - and ought not so be if the husband is entitled to the curtesy in redemption of the wife equity the rule should be vice versa

Powel on Mort 321 322 and [illegible] 1 Atk 20.n.
1 B R 138 1 P W-2 Atk 525. 1 Bro Chan 326
3 P W 229 Plowd 138 - contra 2 Vern 582
Prec in Chan 137 -

In Conn - the wife is intitled to dower in an equity of redemption.

In England however the mortgagors wife is intitled to no Dower in an equity of redemption - and Quere if she has not a right to her thirds - mortgage or no mortgage) not correct I believe no dower

Powell 319.n. 321.n. 2 Vern 403 Prec in Chan 133

This last paragraph is wrong it means only to refer to the right of redemption of such land as was mortgaged away before marriage and in this the wife has no dower by law -

Lect 8 - November AM - monday morning

Tenancy in Dower

By Common law dower must be assigned to the widow before it can vest in her - for she cannot take of course upon the death of the husband

To be made by the heir or he being a minor by his Guardian — not so in Curtesy — In the case of Dower the heir at law becomes heir of the whole ~~at law~~ hence dower must be assigned by the heir — in curtesy the heir does not become seised of the freehold untill after the death of the husband —

1 Inst 34 — 5 2 Bl 611

She is not however dependent upon the heir, for if he or the Guardian does not make assignment she may have redress by court of law and the Sheriff will ~~assign~~ assign the widow her dower whever the heir refuses —

Statute Com 10th

Non forfeiture &

By acts of the wife during coverture and sometimes after coverture

If the ~~widow~~ wife elopes during the coverture and lives in incontinency

Real Property Dower
and the husband is not afterwards reconciled she is barred of her right of dower—

So in the case of a divorce the widow is barred this means a vinculo matrimonii

So if the wife is an alien unless the statute permits her to hold land—

In England in most cases dower is forfeited by the husband treason during coverture for this by common law works a forfeiture of all personal and real property Also may be barred by a fine or common recovery—

Not by deed for this is void—

In New York and Mass by joining in a deed with the husband—

Also by holding the deed and charter from the wife but care is that he cannot ascertain what estate he is to bar her dower until she exhibits the charter so detained

So by statute Glocester by alienating away her land this bars her dower also

48 Real Property - Dower what may bar it &c

2 Inst 329-2 B 6 30-37-

In Con. it is provided in case of divorce the wife does not loose her right of Dower if she was the criminal party if she was she does -

Stat Con 239th

Nor is the Dower forfeited by the husbands treason -

Con Attn U.S. 3d sec 3 -

May bar her right of dower by conveying a jointure -

2 B C 132-139

She has as well as in England -

However if any of the requisites are wanting to make the jointure the jointure is not good and she may have Dower -

Question whether a Dower may be had in personal property in this estate since the statute of 27 H. 8 Dower should have Dower in all lands & and in all other estate - decided in Fairfield that she cannot have Dower in personal property

Estates Real Property estate for years
less than freehold & things

1 Estates of freehold
2 Estates not freehold
3 Estates at sufferance

1 An estate in lands tenements and hereditaments, for some determinate period of time

Eg Lease to A for 20 years

In an agreement no estate for time
less than a year — a lease for 10 months
is considered for a year

Littleton 58 - 67 2 Co 61 b

He who creates this estate is called a lessor he who owns it the lessee

By a year is meant a calendar or solar year.

By a month is meant commonly 4 weeks
A lease for 6 months is for 24 weeks
this does not hold true in the common account —

By a calendar month is meant a space
of time less than freehold a year

80 Real Property – Estate for years
by the month means only 48 weeks –
6 Co 61th 2 Bl Co 141th

In general the law takes no notice of the fraction of a day –
A deed made in the middle of the day
November 1 1841 for one year determines on the close of December 31st 1841 –

1 Inst 135 – 2 Bl Co 141th

Every estate which must be determined by its own limitation by a fixed and certain time is an estate for years –
Hence it is called a term –
It is said that it must have a certain beginning and end –
By the beginning nothing more is meant than in other estates –
It commences from the time that the lease is given unless some restriction is made by the lease
2 Bl Co 143 1 Inst 46b

Certum est quod certum reddi potest vel potius est

Ch. Real Property — Estate for years 19th

6 C-B 5 2 Bl C 142

A lease for so many years as John Stiles shall live is void for its uncertain duration —

Why does it not create an estate per autre vie?

Because there is no livery of seisin

a lease only is made without livery of seisin —

If however livery of seisin is given without the

1 Inst 42 b

An estate for years ~~for life~~ for 20 years if John Stiles shall so long live is a good estate for years — this property nothing more than an estate determinable within 20 years —

2 Bl C — 142 — Cok on Litt 42 b

It is but a Chattle interest — upon the death of the lessee the estate descends to the executors or representatives — Cok Litt 20

.. A being livingr so livery of seisin not necessary to transfer it at com law —

An estate in years may be made for this reason to commence in future — 5 Coke 94th 2 D C 143-4

An estate of freehold cannot be made to commence in future because delivery of a freehold is giving corporeal possession — this corporeal possession is absolutely necessary and the freehold must commence if at all in presenti —

Hence a tenant for years cannot be properly said to be ~~possessed~~ of a seisen — he is possessed of the chattel interest and no more

Coke on Litt 46 — 124th

Term signifies non days only the estate or interest itself — though in legal sense it means both

ments to tenants for years -

Every tenant at years unless certain has the same estovers as a tenant for life — 2 B C 35th 122. 144th

As to emblements there is a distinction. If the estate determines at ~~the~~ a certain prefixed time the lessee is not entitled to emblements - because he might have ~~not~~ known when it would determine

But if determines on a contingency which happens before the estate's time ~~that~~ is determined upon the same principle tenant for life ~~he~~ has emblements

A lease to A for 20 years if John ~~Stiles~~ shall live so long - and John Stiles dies before 20 years here the tenant for years is entitled to emblements because ~~cause~~ it was not his own folly that determined it nor could he foreknow and make provision for it —
1 Inst 56 Litt Sect 68 2 B C 6 145th

But if the estate is determined by

the tenants own act he is not entitled to emblements — because it is done by his own folly —

Estates at Will

Is one which is holden at the will of the lessor determinable at his pleasure & is determined at the will of either party — 2 Bl. C. 145th Littleton 68th Coke Littleton 55 & Rucf 707th 108th —

The lessee has in it an indefeasable estate, in any determinate length of time —

If however the lessor determines it between sowing and reaping the crops the emblements belong to the lessee but if it is determined by the Lessee he has no emblements

1 Inst 55th 2 Bl. C. 120th

May be determined by the lessor by an express declaration that the lessee shall hold it no longer but this must be made

Real Property— Estates at Will—

Rent Lds and rents

And so by the lessor entering any act of ownership as by cutting down timber &c— for by this he determines his will which is sufficient—

Also by the lessors making a lease or assignment or lease to commence immediately

1 Jns. 57— Roll 818 2 Lev 85.

Contra by the lessee assigning his interest— he has no right and therefore can make no transfer

So also if he commits waste because it is inconsistent with his lease

Also by the death or outlawry of either of the parties— outlawry is a civil death— must determine by the death of either party because it is determinable at the will of each and the death always determines the will

1 Cruise 32 5 Co 62 5 Co Rep 116 2 Bl C 145.

If the rent is payable quarterly or semi-annually and the lessee determines the will when any of these rents are accruing he must pay up all the rent due at the time & the present next current rent

But if the lessor determines the estate he shall have no part of the rent which is accruing upon the half ¼, ⅓ or which is running

1 Salk 414 1 Co Lit 66 9 2 Bl C 147

Thus much of estates as considered at Common law — by construction of law what have been formerly considered as tenants at will are now considered as tenants from year — a lease for no determinate period is construed to be a lease for years because this is the shortest time the law knows —

Ld Raym 2 Bl C 147 3 Burr 1609 — Esp Di 460 2 Bl R 1173

Real Property – Estates at Will –
Bur.904 – 3 Esp 4016

It has been determined that notice to quit at any other time than the end of the year the notice is not good –

l. Vr ——— 10 Esp. 159

But if the landlord gives general notice to quit it shall be considered as notice to quit at the end of the year

1 Peak 159

And if after notice to quit at the end of the year he receives rent accruing after year has determined he waives the notice and ratifies the tenancy for another year

6 Esp 219 " 1 Hen B 311

If notice is not ~~given~~ good for the year for which it was given it will not be good for the next year –

2 B. & ~~own~~ Pull 161 –

The want of notice cannot be set up by a tenant who denies the landlords title – for he precludes himself from ~~the~~ holding of the landlord

5th Real Property Estates at Will—
Lessee cannot hold as lessee
and also as tenant—

2 Bro Chan 107

If there is a lease for one year and the
lessee continues in possession
after the expiration with the consent
of the lessor he is tenant for another
year and so on and the proper
notice is necessary

1 Bouvier Law Dict 525 548 1 Ch R 102
with the lessors consent is necessary
for otherwise he becomes tenant
at will

A. A Sufferance

If one comes into possession of land
by rightful title and afterwards holds
over without any title he is a
tenant at Sufferance—

2 B C 120

A lease to A for one year after
this he is tenant for sufferance
1 Inst 57

At the time when Justice Blackstone wrote these estates were not considered as tenants for years but tenants at Will

Difference very great

These viz tenants at will cannot be determined except at the end of the year nor unless there has been 6 months notice given —

It can be determined by neither of the parties unless at the end of the year. This construction seems to be natural for a man would not wish to take the land unless he could hold ~~it~~ long enough to reap the fruits of his labour

1 Esp 159th 105 2 Bro Chancy 107th
2 Esp 486 4 do 367th 7 do 64th 85th 8 do 3

And as it has been settled though either of the parties does not determine the estates and here a previous notice of 6 months must be given — the notice must be ... as the case may be

5 Real Property - Estates at Will -
2 Ch R 159 + 3 Will 25 -

Notice by the representatives of the lessor
if he would determine and of the lessee
would determine his executors must
give notice
3 Will 25

Parol leases for more than three years
shall be considered as tenants at the
will, but by this more favourable
construction the tenant is considered
as a tenant for years -

Eng. stat. 1 Bac on the agreement title B
page 72. 8 Ch R 3 -

Here parol lease is not good for
any length of time it operates only
as a license
Walker 304

Estates at will can hardly now be
said to exist - perhaps there is not
now, can be in substance a tenant
at will in England according to the
english will -
D Mannsfield

Real Property Estate at Sufferance

formerly if a lease at will was made to A and on the lessors death the lease continued in possession he was considered as tenant at Sufferance but these estates are now done away and their tenants for will are done away and now become tenants for years

2 Ves 159 3 Will 265

May be determined at any time by the entry of the true owner so he may consider the tenant as a wrong doer when he pleases — but not without entry for the lease was suspended & continued possession rightfully —

2 Bac 154 Tit Land 57

After having entered ejectment he may maintain an action against the tenant at Sufferance —

and in order to bring his action of ejectment he must make entry on the land —

59 Real Property Estates at sufferance
In action in other cases the actual
entry is sometimes but here it can
not be so

2 B & Ad 884

(on Con)
Here an actual entry is not necessary
The lessor may bring an action when
ever he pleases and consider the
tenant as a wrong doer and hence
here there can be no tenant at sufferance
for one moment he is considered
as a Disseisor or Intruder -
And not in Eng & Green 2
The title may be said to have been
destroyed - it does not abolish the
Kind of estate only renders it unknown
cent and inoperable -
2 B C 150

End of this subject

Alienation by Deed By Simes Gould

Two mode of acquiring lands tenements and hereditaments — 1 Descent 2 by Purchase

2 B C 241 244 —

The word Purchase includes every mode of acquiring an estate except by descent

Whoever holds lands he holds them by one of these methods —

Purchase is used in more limited sense in the vulgar acceptation.

3 means of acquiring estates by Purchase

1 Escheat — 2 Occupancy Prescription for feiture

Alienation — Grant, but not treated as by Grant or Devise 2 B C 241 255 263 267

Alienation generally — preliminary observations.

By far the most usual mode of acquiring title to real estate is by Alienation or by purchase in its limited sense

Alienation includes every mode by which estates are voluntary resigned by one and accepted by the other (or every mode by the parties thereto)

2 B C 287

During the early part of the feudal law a tenant could not aliene without the consent of his lord nor subject them to his debts or devise them — and with this consent not

2
without the consent of the heir apparent apparent or presumptive. 1 Inst 94th 2 B C 57th 287-8th

Contra - The lord could not alien without the consent of his vassal - or by his attornment. The feudal obligation was reciprocal between master and tenant - this was the origin of attornment - 2 B C. 288th -

Well ascertained now that during the reign of Wm the Conqueror and that of his successors land was was absolutely unalienable - 4 Cruise Di 3-4th

And after the right was introduced the greatest estate the lord could create was an estate for the life of the grantee and hence was the origin of the rule of law that if an estate is given to A simply he has an estate for life only - whether 2 B Commentaries 54-120

These have now been abolished -

In the reign of Henry the 2nd a man could ~~convey~~ alien in fee all or a part of what he had purchased 2 B C 288-9th if he purchased it to himself and assigns -

but he could not alien ancestral estate -

and also to dispose of about one fourth part of what he got by descent 2. B C 289

But the statute of quia emptores enabled 18 Ed 1 all tenants except the king's tenants in

capite might alien in fee and by 1 Ed 3 the Kings tenants might alien by paying a fine and this continued ~~under~~ till 12 Charles 2d and hence the title was that of free and common soccage — this statute

2 B 67 72 – 4" 2 99 4 Cruise 9 27

The power of charging lands with the debts of the owner 1 West 2 13 year Ed 1 – by elegit

Before this time no mans land could be taken for debt —
2 B C 161 289 at Conten
3 B C 418 " 2 do 287

And by the statute de mercatoribus a tenant might subject the whole of —
and by 23 Hen 8 by other cognizances similar to these — before this land could not be mortgaged
2 B C 287 2 9 1 – 4 B C 2920
4 do 8th

The necessity of attornment continued till 4 Anne
2 B C 290

Alienation by Deed —
The legal evidences of the ~~conveyance~~ alienation of real property are called common assurance — because they are the means by which a mans estate is assured to him and his heirs
1 by Deeds — 2 By matter of Record — 3 or Special

Deeds
Custom 2 Bly Devises
Common assurances on 2 kinds –

2 BC – 294 [illegible] 1 Cruise 9

Alienations by matter of record is not in use in our law; and by special Custom none in the US – Our Customs are General Customs

2 BC 3 [illegible] 365

1 Deed – a writing sealed and delivered
writing and sealing constitute the deed but it does not take effect untill delivery –

1 Inst 171 2 BC 295
1 Inst 35 B

A Lecture on Deeds – by James Gould –

As a deed is the most solemn act that a man himself can perform, every man is estopped by it – it is because of the solemnity –
The law attaches a peculiar solemnity to a deed – this means that a man ~~th~~ shall not be permitted to prove any thing in contradiction of his deed – (this is the notion of an estoppel – that which prevents a man from averring what he otherwise might do if it were not for this deed) –

2 BC 295 – P 434 6 BC 31

Hence if A makes a lease of lands which he does not own but after making the lease

A purchases the land^Deed A is estopped from saying that he had not a title at the time of making the lease - for it is presumed that he who makes a lease has the legal title -

Salk 296 3 T R 438 741
1 Ld Ray 729 6 T R 87 1 2 Ra 171 &c -

But it seems that if matter of Estoppel is relied^on merely as evidence and not pleaded it is good Evidence but not conclusive

3 East 325 363

A deed of mere quit claim is no estoppel for the lessor does not covenant that he has title -
A releases blackacre to a^b or quit claims it and afterwards purchases it - B cannot plead this release against A 1 Inst 265 Littleton 8 T R 370

And upon this principle, if one is sued upon a mortgage and a lee sues an ejectment - the disseizee cannot ~~plead~~ deny the mortgagee title -
1 T R 760 note

And here any ordinary lessee cannot deny the lessors title - 1 Root 77

In Eng. A lessee cannot in action of debt for rent deny the lessors title if it is by indenture - also Deed made by deed poll may

Deed   Requisites

deny the lessor had title

Lil. sec 5 n 1 Inst 217 B. - 3 Lev 405
Esp di 233 3 c 5 7 T R 537

A deed executed by one party it is called a deed poll
By all the parties is called an indenture - so
called because all the parts were indented

Lill sec 370 n 72 1 Ins 220 + note 1
2 B C 295 6

When each alone executes one part it is called
interchangeably executed - that by the Grantor
is called the original by the other counter
parts -   2 B C 296

And a counter part in ecy is held good evidence
of the existence of ~~ance~~ the original

Pre in Chan 126 " 3 T R 405 ".
Peakes evi note 96 5 Esp 2,65 Sal 287

Thus far of the nature now for the

Requisites of a Deed. there must be

1. Parties able to contract and a subject
matter to be contracted for

Hence in every grant there must be a
Grantor Grantee and a thing granted
If either of these is wanting - bad deed -
2 B C 296

There must be the necessary parties - all who have any interest should join when the whole is intended to be given - so far as interested parties do not join so far the deed is defective -

Carthew 76 - 4 Cruise 18" 14"

Contra All those who were intended to take any interest beside a heir should be parties to it - for those who are not parties cannot take by law except by remainder -

1 Inst 231" A - 4 Cruise 14"

Gen rule

All persons under no legal disabilities may convey by deed - not universal -

2 B C 290

For a person ~~of~~ out of possession who has the right of possession cannot ~~take~~ transfer to another who is out of possession - this is to prevent the sale of pretended titles

1 Inst 214 2 B C 290"

This is common law - but here such conveyances are prohibited by Statute and declared null and void - and it operates as penalty also half of the value is forfeited to the state the half to the informer Stat Cen 44 6 1 Root 100 99
2102 Kirb 221"

8 Died Requisites

But a conveyance by the mistress to the mistress is not within the Statute - for the reason does not operate here - no inconveniencies from this practice 1 Inst 214b

The owner is not prevented from conveying unless that possession is adverse to the owners possession -

Rents Rem and Revers may be granted though the land is not in actual possession the possession of the tenant is by legal implication (implications) the possession of him in Rem or Rev 2 Bl C 290 - 1 Swift 305

When the same principle when one is in possession and the owner the owner may convey to a third person - This has been often mistaken in Con - for this is not the case of a quarrel 1 Swift 300

So in Con - the statute does not intend to cases made by the Statute - for these are not within the mischief - Kirby 22 / 489

Deed Requisites
So sales by an Exor or admin – under the order of a court of Probate not under the Statute As the creditors might loose their claims – since no one can bring a suit but the Exor – 1 Root 182 Con 100 overruled –
Same rule hold as to Guardian who sell in pursuance of the decree of chancery – this overruled here 1 Root 211
So been determined sales by Collector of taxes to pay the tax is not within the mischief of the law – reason the same as before the law requires this to be done and why should it then disapprove of it? 1 Root 291
So a mortgagor whose title is denied by the mortgagee may yet sell his equity of redemption to a 3d person – for here the mortgagee is put in possession by operation of law – 2 Root 499 Osborne vs
Swift says if A sells land to B and A keeps in possession B sells over to C – conveyance to C is good – because A is estopped – not court says good – 1 Swift 305

" Deed

Conveyances by infants are voidable and not void vide parent and Child – Guardian & Ward

Idiots and Lunatics are not totally incapacitated – By Com Law no man can Stultify himself – they are void ab initio – because says the Com. Law how can the idiot or lunatic say he was incapacitated –

~~For authorities~~ infant

2 B 6291 Cro. Eliz 391 Lit

Sec 405 & Co. Lit. 123 B Fonbl. 2 Fonbl 210 and in 1 Inst 247" 4 & 3 Tlb volume 2 oz. Comber 210 P" 2 Stange 1104"

The King may in behalf of the idiot may avoid the contract entered into by the idiot but reason of

The same may be done by the Committee of a lunatic this is done for the lunatic.

2 B 6291 1 B 041 Fonbl 2132

2 Vern 412 678" Lev ca at 274

And after the death of the idiot his heir or executor may avoid the deed – if it is conveyance of a personal property must be done by the Executor

Ver Sec 21 2 Vern 20 1 Fonbl 48"

Privies in estate cannot avoid an instrument made by a lunatic or idiot as the case may be –

4 Coke 124 & Coke 2 13 A 1 Sont 2 15 b)

But how is this reconciled with another rule which says that a deed executed by an idiot is void - this means as against his heir or representative - but a feoffment is only voidable by the heir & Coke 2 b 4 Coke 125 a
Litt sec 405 1 Inst 2 b 5

Void & Voidable
A thing strictly void is a legal non entity as though it had never been
But a thing voidable is good untill it has been avoided -
If one enters under a void deed - he is a trespassor - No advantage can be taken of an avoidable deed but by the parties themselves -
If a lunatic levys a fine or suffers a common recovery it binds himself his heirs and representatives 4 Coke 124 12 Coke 12 124
Ditto 2d Cro Eliz 187

Once ditto an idiot might prove his own incapacity at the time of making the contract

In Con a man may stultify himself -

3d Lecture By James Gould Esq Litchfield Jan 23 182

If a non Compos purchase estate and recovers his senses and then assents to it it is good against his heirs
1 Inst 2 1 B C 292

But if he dies without recovering his understanding or having recovered it does not

not assent the heir may avoid it Deed
same authorities

Vide Husband & Wife for conveyance by married women -

If a deed is ~~sca~~ obtained from a man by duress he may either affirm or deny it after the duress is removed -

5 Coke 119th

By Com law all persons may be grantees in a deed - idiots lunatics &c -

~~The~~ A deed to a feme covert is said to be void - a purchase is by her is voidable -
voidable by her husband during coverture after coverture by herself -

1 Inst 2 - b 3 C Ant 1 112-A

An alien may purchase by com law but cannot hold - that is the interest will pass out of the Grantor -

1 Inst 2 b Esp. iii 439th
4 T R 300th

An alien friend may hold a lease for years of a house for the convenience of commerce -

2 B C 293 this is Com law

In Conn Aliens are disabled to hold or purchase land without special license from Legislature

1 Swift - 79

Deeds to be made by Grantor Grantee &c

An exception in favour of British subjects living here before the revolution and in favour of the French subjects by the treaty of 83 stipulated

Those who are naturalized under the Con of the U.S. are not included

By certain & any statute statute is not may
but sometimes prohibitive and sometimes
restrains — 1 BC 479 2 BC 285 + 2 Cases 23

In this State there are no statutes of Mortmain
for Corporations & may purchase lands
However all lands ~~given~~ granted for the
support of schools Gospel &c ~~&c~~ shall
not be alienated but they shall ennure
to the uses for which it was created —
Long leases for years in Grose are good
Institute 2 B3

Thus for the 1 requisite —

2 Consideration

Every deed must be founded upon good
and lawful Consideration
2 BC 296 +

Not necessary at Com that any consideration
should be expressed in the deed because the

Deed - Consideration

Deed itself implies one -

So far as respects the legal title no consideration is necessary -

In uses or after the Stat of uses the Grantee had the beneficial title - the Grantee was considered as trustee to keep this use for the grantor 2 B C 130 " 24 L 2 327 " 330

And now a deed without consideration is said to enure for the use of the grantor at law

Park 5 a 533 2 B C 290

A consideration may be good or valuable and either of these are sufficient to raise a use - 2 B C 330 " 338 & Cases 24 "

The necessity of consideration arose from the introduction of uses

The reason of Consideration at law is - Any at present - when one has the use he could enforce this only in a court of Equity who always require a consideration - the law courts adopted this rule after the Stat of uses from the practice of Courts of Equity before the Statute -

We Americans doubt whether this rule applies

2 B C 290 note

Hence a Deed declaring no use without consideration is inures to the benefit of the Grantor
Conf 9"

Quest: Would a deed without consideration of in Con ensure to the benefit of the Grantor because the doctrine of uses never obtained here — or never did here —

Good or Valuable.
Good Consideration is that of kindred or Relation — Does not extend farther than Brother or Sister children — or heirs at law —
Hence a deed to a child is good
Valuable Consideration is one which contains pecuniary satisfaction —
So marriage stands upon the ground of a valuable Con — 2 B 2 3 4 4 C 3 4 B 8 / 1 Pow on Con 3 61 1 n 6 3 8 7 / 4 Cruise 27"
A conveyance upon a Good Con is good as to the parties but is void as to creditors by Stat of Eliz and by Stat of Con —
2 B l 297 — 1 East 59"

Consideration expressed cannot be denied by the parties because they are estopped.

3 Burr 321 2 B C 245

Plowd 232 ... C. L. 20

but the Grantor may impeach the deed for ~~want of~~ illegality as for usury — fraud evidence is always admitted to prove fraud — 2 Wils 341 2 Cowp 109

Strangers to the deed may deny the existence of the consideration of the deed — if they are creditors and bona fide purchasers

A deed for divers good considerations is considered as expressing none at all — because the court cannot judge whether upon the face of it, the consideration was sufficient — 1 Coke 176 Plowd 151 2 Chit 15 ...

Cro Eliz 302.

But in such a case the Grantor may prove a good or valuable consideration — so that the deed is not absolutely void only voidable — nor does ~~not~~ ~~this~~ go to prove and ~~they~~ debtors the 4 Coke 17 ... 2 ... 70 ... 39

more 7 Ho 26 ... Cruise 38

Deed Consideration—

So where there was a specific sum that was competent for the Grantee to show there was other than that expressed—

1 Co Lit 176 7 C 39 a.

Hence it would seem that no consideration being expressed the true consideration might be proved by parol—no decision on this point directly—this parol evidence does not contradict the deed

Jur 2 Co Lit 76 a

If it appear that the deed was made to the Grantors near relation the deed itself expresses sufficient consideration though no consideration is expressed—for it appears that the Grantor and Grantee stood in the relation—

7 C 39 Bird this—Plow 308 a

1 Roll Ab 68 K

But in such a case if a specific consideration is expressed none other can be implied upon the face of the deed—expressed

7 C 29 b 1 Inst 183 b

5 Co Lit 97 a

Acknowledgment of the receipt of the consideration

Deed Consideration

is not conclusive against the Grantor—
It is presumptive but not conclusive
been decided here Brown vs Catlin also
1 Root 273. 2 Do 94.

3 Requisite is "Be written or printed" and the Com Law requires it should be written on paper or parchment—

It may be written in any language
1 Inst 229 A. 2 BC 297.
4 Cruise 25.

Formerly writing was not necessary to pass lands but by the Statute of Frauds and per no interest greater than 3 years can be created without writing and all such void instruments operate as ~~tenants at~~ leases at will. Thorough construed as ~~tenants~~ leases for years
2 B C. 314. 313 297
300 1 Bacon 72d Roberts on frauds 220 &c—

And the deed must be written before the sealing and delivery—if one seals a blank sh. paper another ~~fills~~ fills it up not good for the deed takes effect upon the delivery
Shep Touch 54. Do Ab. 3d 118.—4 Cruise 26)

As to writings not sealed vide Bills of Ex. hage

4 Requisite - the subject matter legally set forth - 21

The subject matter must be legally set forth - not indispensible that it should be in the words of the statute - though better. 1 Inst 6[a] 225 - 2 Bl C 297 & Cruise 33

The formal parts of a deed are 8[th]

1 Premises of a deed - these contain the names of the parties - the recitals if any - consideration - exceptions if any & description of the subject. The premises include all that precedes the habendum - 2 Black 298 & Cruise 33

The omission of the Grantees name in the premises does not vitiate the deed if his name is in the habendum -

And a wrong name in the premises and a right name in the habendum the former may be rejected - 3 East 155 & 1 Inst 7[a]
Shep Touch 75 & Cruise 117

And when the Grantors name was not in the operative words of the Grant but the consideration was expressed to have been paid - to him was held good -
Salk 341 & 10 Mod 41[a]
& Cruise 419[a]

22 Deed — Premises:
To a Grant to George Earl of Pembroke his name being John was good — since the delivery was made to the earl of Pembroke Coke Lit 3 A de Grem 34

A mere clerical mistake will not destroy an estate — such a mistake may be explained but a party cannot explain the deed so as to alter the true construction of the deed — mistake in name or figure & these may be rectified — 2 Fla 185

A grant to the wife of A is sufficient to enable her to take under the deed — So also to the wife of A by a wrong name the Christian name may be erased this supposes the delivery of to the wife of A — 1 Inst 3 A 2 Grem 35

A grant by one surname generally or Christian name is void for uncertainty eg to one John or to one Smith —
the delivery does not remedy the defect — in the former cases constat de persona from the husband —

Deed — Purport
And a name acquired by reputation is good for
a Grantee — 3 Prot A
And a Grantee may be described without
either of his names Thus to the Advent son
of John Attle Stiles is sufficient —
for when constat de persona appears
no matter how —
The word Issue is sufficient —
Issue of John Stiles sufficient —
1 Inst 2 8" A — 4 Com 35"
for rules concerning exceptions vide covenant
broken —
Vent Habendum — & Tenendum —
The office of Habendum is to designate the
quantity of interest to be conveyed
not however to be understood to designate
the quantity of interest but it serves to
rectify mistakes as vide antea
When a deed is formerly drawn the habendum
shows only designates the quantity
of interest —
The Habes — 2 B 6298 2 Com 216 "4"

Deed Habendum & Tenendum

But when the quantity of interest is expressed in the Premises it may be constrained, altered, or varied by the habendum — 1 Inst 21 2 Roll 19 pl 23
Prob. James 2, 76 Prob. James 2d 76
2 Roll 19..2 3d 2 B C 298" ++2 BC 298
Con & C 152, B — 1 Inst 21" note 2d 183 same 299
Moore 26 2 Cruise 15 21"

Any generality in the of expression in the premises may be generally restrained by the Habendum Conf 4th

Yet if the Habendum is repugnant or contradictory to the premises it is void — premises for of two inconsistent clauses the 1st must take effect — In Wills the clauses the latter takes in preference to the former —
2 Coke 23 8 Co 3 5d Plowd 153
2 B C 298"

For other rule vide 2 Cruise 31 to 37"

The Tenendum not used to express the manner in which the freehold was to be holden — but now it is matter of form — all the tenures being reduced to common [illegible]

Deed Reddendum - Warranty - &c 25

2 Bl 229 - 2, Cruise 9.47" -

3 Reddendum this is to express the terms upon which it is to be held if any -

2 Bl 299" Plowd 81st
8 Coke 71st Shep Touch 81st

4 "Rendering such a sum" is a covenant to pay so much -

Sheppard's Touchstone highly recommended -

5. Next - Condition vide estate on Condition

6 Warranty important -

Is that by which Grantor for himself and heirs warrants the deed -

When the warrantee is evicted the Grantor must give other lands of equal value either upon voucher or warrantia chartae -

1 Inst 365th A 2 Bl 300

For lineal & collateral warranty vide Bl 300 2

A warranty may be expressed or implied vide Covenant broken 2 Bl 300

2, Cruise 2, 9 450

7 Covenants -

2° Deed Covenants
Are an agreements by which either of the parties stipulate something in favour of the other — may be made by either of the parties or by both —

Plow 134" 2 B C 3 Ba"
4 Cruise 6 2"

The usual covenants in com. are two 1 that the Grantor is well seized and 2 the warranty to the Grantee.
A release or quit claim does not contain them —
Difference between a Warrant & Covenant —
A ~~Covenant~~ Warranty binds the Grantor and his heirs to pay other equal lands but not personal representative —
A Covenant entitles the Grantee to damages and binds the Executor but not heir unless he is named

1 Vern 511 - 1 Inst 378 A 2 B C 304"
4 Cruise 49 50 66

If land conveyed by metes and bounds and answers that description the sales is valid against ~~that~~ the Grantee

Deeds Covenants

Through A falls short— In England the land is not designated by metes and bounds— But this is the practice in this country

1 Root 528 2 Root 253
1 Swift 303

The rule is the same if the deed refers to another deed or record which contains a similar description— 2 Root 252

In some instances the description is by metes and terminating monuments if the mets do not correspond with the monuments the monuments shall govern because these are less likely to be mistaken being permanent—

been decided but repeatedly

Gould

But if the description by quantity alone the Grantor is liable on his covenant if the quantity falls short

1 Swift 303

But if the qualifying words were inserted the rule is different the Grantee takes whatever there happens to be—

1 Swift 303

And now "more or less" is now generally used—though where there is metes and bounds these words are useless—

8th part Conclusion—

This mentions the date and execution—

In deed poll the date is usually in the conclusion ~ B 6 302"

It is very material, (point to notice) that the date is no part in strictness of the deed but merely a written memorandum of the time of execution—

Anciently English deeds did not contain dates and so continued until Ed. 3

A deed is good without a date—but advisable to insert it 1 Inst 6 A Chellyon Bills 213 2, Th 337' 2, Cruise 33

And hence a date is prima facie evidence of the time of execution and the date may be contradicted by parol evidence—

1 Inst 2,6" Dyer 28"
Salk 2,62-8

That a date is no part of a bond or deed—for this is no part of the contract

Deed — 8 Requisite Conclusion 29th

If one there are two deeds of the same nature between the same parties that which best supports the intention of the parties shall be ~~presu~~ ~~said to be~~ presumed to have been made first.

1 Bur 107 2 Cruise 34

5 Requisite — Reading —

This is necessary if either party desire and if either desire the reading and it is refused him he may plead non est factum —

But if one reads it and misunderstands it, he misunderstands it at his peril — this may be proved by parol —

2 B C 304 2 Cruise 27

Moore 184

This seems to contradict the rule of estoppel but this does not deny anything but the unlawful execution of it.

If the party can read he should read it himself 2 C B 11 Co 27 2 B C 302

but if he does not read it or request the reading his act binds and he adopts the contents 2 C & P Moore 182

And if the party read it falsely it will be void as that part so read unless it is so read by collusion between the parties in which latter case the deed will bind him

2 C Jd. 6 Co. 22 2 B C 302

6th Requisite is Sealing at Common law and by the Statute of J. & B. signing is necessary - 2 B C 306 2 Wils 26

Signing was not necessary at Common law for few could write their names - hence Seals were adopted with propriety - each one had a separate distinction now not use 2 B C 305 Com Dig tit fait B 1.

In Con: signing is necessary -

Swift Con 653

One person may appoint another to execute a deed for him but it must be executed in the name of the principal

Thus for John Stiles by

A. B. his Attorney

Strange 705 2 East no page 142

when form necessary 9 C 76 B. 6 C R 127

Lo Ray 1418

Deed signing & sealing—

If not executed in the name of the principal it will bind the attorney and not the principal for the deed of A cannot bind B—

Chitty on bills of Ex 22. 27. 56. 75"
Fitzmaur. 705" 955" 1 C.P. 5—1 Fr. 181"

But an Attorney nor a Copartner can bind his principal nor partner without authority (in deed) by deed—

But an Agent may bind his principal by note by verbal authority—that is promissory note— Bart 5 2d A 7 Fr 207th Com Di tit attorney C 15" 7 Fr 207" 2 do 313"

Because as a man cannot make a deed without sealing so he cannot confer the authority but with equal solemnity— As a man by circuity might avoid the statute of frauds & perjuries

This rule refers to the absence of the principal For it has been lately determined if one binds himself and another while the other is present—this is good without a sealed authority—2, Fr 318"

For without this no man incapacitated to read can make a deed—

of Deed Delivery of Requisite

That if several Grantors are named and one seals only for himself thus(?) his wife signs only

Shep Touch 71 & 623

of (Delivery)

Every deed to be operative must be delivered 2 B C 306 7th

Every deed takes effect upon delivery nor can it take effect before 2 B C 307th 2 C 21th Shep Touch 58th 72d Plowd 21st

If a deed is made and dated during the Grantors minority but sealed and delivered after full age it will

Shep Touch 72

And though a 3 person seals the deed yet if the Grantor delivers the deed good for he adopts it 2 B C 307th Perk Sect 30 2 Bac 28th

If deed is delivered unsealed it takes effect not as a deed Shep 58th

The act of the delivery may be without any words & effectual and contrariwise may be a delivery with ~~out~~ words only tis not absolutely necessary there should

be an actual ~~manual~~ Delivery delivery—

3 Cain 28th Shep Touch 58" 4 C 137"

Littleton 36" 24" 1 Inst 36 Ath

note 6th Croke Eliz 122 350

If however the deed lies on the table and the Grantee takes it it is not good unless it is laid there for the Grantee to take unless the Grantor consents by his being present—

Shep 58th note 3d 1 Leon 140.

Com Di title fait A 3

A deed may be delivered to the Grantee himself in person or to any other person having authority to receive it or to a stranger in behalf of the Grantee— In the two latter cases the deed is to be delivered over Shep 57 & Ver Eyre 167"

A deed cannot be delivered so as to have any effect more than once for if the 1st has any effect a subsequent delivery is void but contra if the first is utterly void the second delivery may be effectual—

Shep Touch 60th Dick 154th

3 Burrow 1805" Comp 201st

2 Cain 20" 24th 24.

If the first deed is absolutely void a subsequent delivery is good.

9 If a married woman delivers a deed and after coverture delivers it again the latter delivery is good.

If a deed once good becomes bad by matter ex postfacto as by loosing seal it becomes good by sealing again.

Contra.

If an infant delivers a deed and after full age delivers it again it is bad because the former was only voidable.

If a man under duress delivers a deed and after duress delivers it again it is bad because the first was only voidable

Perk

N. de Cain

The voidable instrument of an infant may be made good.

A delivery may be Absolute or Condition al.

When the deed is delivered to the Grantee himself or some person but to be delivered over without condition tis absolute

But if the third person is to ~~to~~ deliver

it over upon some condition tis conditional
(Delivery inserted above "condition")

2 Bl 307 / 1 Inst 36 A

In the last case the writing is an Escrow
untill it is delivered over—

do — do

A writing cannot be delivered to the Grantee
himself as an Escrow — if delivered to him
it is absolute of course —
Because the Grantor cannot make parol
averment that it was not delivered as his
act and deed — Shep Touch 59 " 9 C 137 "
Contra Cuk 585 Moore 647 — 1 Inst 36 A note 3 Cuk Eliz 520 584 — 1 Inst 87 "

A note given to the Arbitrators to be delivered
over to the prevailing party is an Escrow —
If a grantor delivering an escrow to a stranger
says to him — I deliver this as my deed to
be delivered over upon condition — this is
an absolute delivery — tho much of the
Steel trap says Mr Gould in this rule —
Shep 59 " Dark 1 Inst 36 A
9 C 137 A Com dig title fact A 3

because my deed is my deed absolutely — been
so decided in Massachusetts —

37

Deed Delivery

When a deed is properly delivered as an Escrow it is of no force untill the condition perform'd untill the condition is performed and if it is delivered to the Grantee before the condition is performed it is not good

Shep 59th 4 Cruise 2 / 30th.

But when the condition is performed and it is delivered over it ceases to be an escrow and from that moment it is my ~~own~~ deed—

If upon performing the condition the depositary man does not deliver it over the Grantee has an ~~legal~~ equitable title because it is inchoate with the first delivery—

Shep Touch 29 5 C 84 b

Doubts when the title vests,—

In ordinary cases the rule is from the 2 delivery and the title takes effect only from that time— 3 C 35 b 36 A 5 C 84 B

Yet in case of necessity ut res magis valeat quam ~~[illegible]~~ pereat the title shall take effect upon relation to the first delivery—

Hence where there exist a dissability in the Grantor upon the performance of the Condition the delivery takes effect with relation to the first delivery

Deed — Delivery

If a person sole delivers a writing as an Escrow and upon condition being performed it shall be delivered over as having relation to the first delivery yet if it should take from the second delivery it will be bad because it would then be void —
3 Co 35 b Shep 72 Cook 247
for this is a case of necessity — where no is called quam proxime — 5 Co 35 b Hill 23
Shep 72 Cook Elizr 247

And if one delivers an Escrow and then dies the condition being performed the Escrow becomes a deed with relation to the first delivery else it would be void because the Grantor was dead at the time of 2d delivery —
8 Co 35 b Cook Elizr 247

Now in such cases the performance of the condition will vest the title — that is when there is a discretion upon the delivery — The delivery is merely formal — because if an attorney is authorized to act for the principal the death of the latter destroys the power immediately

Deed Escrow

And if the Escrow is to be delivered over upon the death of the Grantor it must take effect with relation to the first delivery—

1 Ch 1809 1 Root 160 2 Co 383
5 C 84 Buller & Bacon.

So also if one of a sound mind makes a letter of attorney to make feoffment upon the performance of some condition ~~th~~ and then becomes non compos mentis— the conveyance if made during the non compos mentis— it takes effect ~~from~~ with the relation to the first delivery

Cuk Eliz 2, 4 Shep Touch 72

note 1st

The doctrine of relation applies to those cases in which ~~are~~ ~~commenced~~ ~~when~~ the future act of the depositary is a consummation act and not a ~~?~~ act—

If one A gives to power to give livery of seisin ~~and~~ and A dies before seisin the act of the attorney is void—

If one give a bare authority to an agent Shep 212 power to do any act after the death is totally void

— Attorney 86. Bac ... [illegible]

Quere

Contra -

If the doctrine of application would defeat the deed the title will vest from the 2d and not 1 delivery. A shall have no relation to the 1st upon the principle as before to give effect - it is magis valeat quam pereat

If a person dismissed delivers a lease ~~to~~ delivers it over to the lessee possession ~~out of possession and delivers it over~~ to a stranger ~~out of possession~~ to deliver it to the lessee ~~from him~~ this shall take effect from the 2d delivery because the agent is in possession at the time of the conveyance over but was not at the making or 1st delivery

16 Ves. 179 3 Cruch. 352
1 Burr. 281 6 Mod. 52
3 Bulst. 215

This last rule cannot operate so as to violate any incapacity of the Grantee of the first delivery Thus if an infant delivers a deed to a stranger and he delivers it over after the infant comes of full age because the depository might be

Simon

This does not the privilege of infants viz not to be bound by their infantine contracts-

And so if a woman delivers a bond to be a Escrow and be delivered over to the Grantee - after coverture this delivery shall take effect from the first delivery

3 C 85 B 86 A

C Cuke Ch 165 Cro L 617

A deed when it does take effect by relation never effects collateral acts by that relation -

If a bond is delivered to a Stranger to be delivered over and in the mean time a release from the Grantee to the Grantor, this will not effect the bond -

3 C 86 A Wils 73 A

A deed on the 2d delivery acts by relation only to vest the title -

This retroaction of relation can never make one a trespasser by relation

Belden and Carter 1 C

A mere deed of conveyance to B - for

Escrow
delivers ~~it~~ over to C to ~~[illegible]~~ give to B upon A's death — A dies — can't B sue. A's representatives are not responsible as trespassers to B — though the ~~g~~ Grantor continues to ~~[illegible]~~ be in possession

1 Inst 15 a "   Com. Dig. title cont. ~~[illegible]~~
5 Hob 7th 3 C 21 B 36 A

A deed delivered to ~~B by~~ A to [illegible] to give over to C it shall be good for C until C refuses to accept it because every man is presumed to accept of that which is for own benefit —
2 Root

If the Grantee however upon a tender of the deed refuses to accept of the deed he cannot afterwards claim the deed ~~afterwards~~ unless the Grantor consents afterwards —
If it is delivered without consent the Grantor ~~non est factum~~ — may plead — Non est factum

Coke 1 1 2 3 626 B
Doc. Plac. 260 —
Shep. Ed. " Croke Eliz 55

Last requisite at Com law is Attestation which means the execution of it of it in presence of witnesses —
So called because the witnesses are called to attest

2 BC 307

Not however indispensable at com law It only is for the purpose at com law of furnishing evidence of the authenticity though advisable

2 Crus. 31 2 BC 307

Formerly the witnesses did not subscribe bu and because few could write hence it was signed sealed and delivered his attestibus
After Hen 8 deeds were witnessed by subscribing —

Co Litt. 1 Inst 7 & 78
2 BC 307.8

These are all the requisites at Com law
In Con. to all deeds mortgages & two subscribing witnesses are necessary by names or marks Stat 1658

Denon Statute requisite – 9th 10

requisites by Statutes differing from Com law

9 It must be acknowledged before a an assistant or justice peace – before 1698

Justice Peace were called Commissioners –

This is to guard against any fraud by Grantors – Stat 63 1 Swift 307

We have a provision in Statute which furnishes the Grantee with power to compel the Grantor to acknowledge after the deed is ... [illegible] made –

Stat 63

10 Recorded at Length in the town where the land lies – this is not necessary against the parties themselves or repre-sentatives but tis as to third persons –

In Mass the deed is recorded in the County book – Stat 63.4

This recording is intended for the benefit of 3d persons

On the receipt of the deed the Town Clerk he must minute the day on the back and the record bears this date –

From the date of the Record tis good against 3d persons – Kirb 72 1 Root 64

Deed Statequisites - 11th 9th

As between successive purchasers the one first recorded is prima facie evidence of the title -

This does not hold as against prior grantee if he has used due diligence to get it recorded - if he has lodged it within a reasonable time good at law, at Equity in England. 1 Root 388 2 do 239 1 Swift 308

In equity in Eng is in Equity

But Contra - if a prior Grantee has been too negligent a subsequent purchaser & attaching creditor shall hold in exclusion of the prior Grantee - 2 Root 287 1 Root 388 1 Swift 308

What is a reasonable time must be determined by the particular circumstances of the case each case - 1 Root 389

If the prior Grantee having lodged but presents the record in Chancery in case of the subsequent record of it is not good against a subsequent purchaser who have got their deeds recorded

Deed – Record – Stat requisite –

1 Root 81" But this does not hold when the recording is prevented by the town Clerk or by the subsequent purchaser – because the delay is not the fault of the 1st purchaser 1 Root 6 ?–2–500" 2 Root 239"

A subsequent deed recorded shall hold against the the prior deed where the Grantor has been neglectful even when the subsequent grantee knew of the former deed – doubted by Goulds 1 Root 61 8! 1 Swift 309"

The register act seems opposed this ~~act~~ practice in our State see by law courts to decide this matter 1 Fonblanc 23d 11 ... 66 Cowp 712"

If the subsequent purchaser in England ~~known~~ of the prior purchase it is bad in Equity only 1 Fonb 231 Eq.ca.ab. 758" 2 Atk 275 3 Atk 6?6 Ambler 328

A town Clerk after he has rec'd the deed for record he cannot give it back without recording it at length – if he does it he acts at his own peril (Superior Court – even though both parties request it – 2 Root 85

Deed - Record - how discharged

And if the town Clerk should conceal it he undoubtedly would be responsible in damages for some person may purchase without being able to discover the true title -

How avoided?

If the instrument wants any of the requisites it is void as a deed, but may be good as an executory agreement -
2 B C 68'.

So made void by matter ex post facto as by rasure - or altered by a material alteration -

If the grant is made for 50 acres and altered to 20 acres - the deed is totally destroyed
2 B C Box" 11 C 27'

Rasure interlineation & before delivery does not vitiate the deed and if a memorandum is made of it at the time of the insertion Chief 55" 4 3 Cruise 26'
2 B C 308"

We have no such rule an interlineation does not invalidate a deed though without memorandum

An alteration by the Grantee after

Deed how destroyed?

The deletion either material or immaterial vitiates the deed - though not forgery
1 Coke 176 A Jenkins
234 1/2 Roll 29th

But an alteration by a stranger does not destroy the deed unless in a material part -

The materiality must be pleaded by the construction of the deed -
11 C 27 A Cro Eliz 26
2 Bulst 147 2 Roll A 29th

Non est factum - 8 C 119 11 C 27 A

But a stranger is liable to the Grantee in an action on the case
Cro Eliz 826

It may be destroyed by tearing off the seal or by the Grantee delivering it up to be cancelled 2 B & P. 5 C 23 -

So by the subsequent disagreement of those whom it is necessary to make it valid - as by an infant if prejudicial
Shep 68 2 B C 309

A deed may be avoided by the sentence decree or judgment of Court -

An application to set aside a deed is to a Court of Equity - Three cases are mentioned -

49 Deed Construction

2 Bon on Con 263 to 166 2 B & 309"

As to Construction

1 To be construed as near the intention of the parties as the rules of law will permit—

Not according to the literal or grammatical construction—

1 Inst 36 A Shep 87"

4 B 48 A 3 Atk 136

2 And the construction should be upon the whole instrument and not a part—this means reference should be had to all the parts and so made that every part shall take effect if possible—

Plowd 160–1" Shep 87 2 Bur 1 Willes 283

3 The words should be taken most strongly against the grantor and most favorably for the grantee—because they are the words of the grantor—

Shep 87–8

4 If there are two repugnant clauses which are to operate the first should be taken—in Wills the latter is taken

Shep 88" 1 Term 30

1 Inst 299

When general words of release stand by them selves, they are to be construed liberally but if preceded by particular recitals it shall be construed with regard to the particular recitals.

Bac ab title release lett. K. Hob 174.
1 Powel on Con 390 & Dy 26 8"

Whenever the deed will bear two constructions one of which is agreeable to justice law and right the other not the former is to be taken –
1 Inst 42 2 A 183 et
& 1 Cases 2.17"

In all cases, words which are repugnant to the general tenor of the deed they shall be rejected 3 Atk 135. 6 Bac ab[?] 351

5 When any grant is made all the means which are necessary to obtaining the subject of it are also granted

eg A grants a piece of land to B enclosed by his own – a right of way passes at the same time 2 B 630 1 Inst 56

If a grants trees to B B may enter to cut and carry them off – otherwise the grant will not take effect –

Deeds rules of Construction

So if a man is granted a right to dig ... also granted. Shep 89 11 C 52 A

If one grants to another fish in his pond the grantee may go onto the land and take

The grant of the principal carries with it the incidents without the "appurtenances thereunto belonging" Shep 89 Will Sa 52 2d vol 4 C 86 7 2 B C 174-6

So if A grants a mill he grants a ... the water necessary to carry the mill — Shep 89

A deed drawn in a form which by law it cannot take effect it may by another form carry the intention of the grantor — ut res magis valeat quam pereat

Shep 79 th 2 C 35 Conf 600
2 Will 75 1 Inst 301

A grant made by several when one only has the interest granted it shall operate as the grant or deed of that one only ... Perk sec 68 Shep 81 2 & T p 2.72 1 Henry B 514

When the terms are so uncertain that the intention cannot be discovered the deed must fail

the grant is void

Thus I give to one of John Stiles children this is void — Hob 313 [2] 2 Cruise 251

If a deed contains several stipulations some of which are good & some bad — the latter are void the former are good — 11 C 27 B Shep 71

If part of an instrument is void by statute then the whole is bad —
If part of the instrument by Common law not bad as to the whole
For Statutes are construed strictly this arises out of the phraseology — 2 Will 351 "Hob 14" 1 Powell on Con 199. 200.

If a deed contains two distinctly clauses one of which is void read particularly and one well read the deed will be good as to the latter — 11 C 27 B Shep 70

But these rules that when there are several clauses some of which are well read and some not and some lawful and others not does not extend to cases where the two clauses depend upon each other — Shep 70 [+]

But if a deed contains several covenants instrument is altered in any one of them

Deed is destroyed in toto – so the Grantor may plead non est factum – this means material alteration –

Shep? 11 C 28 b

If two persons are jointly bound in a deed and one's seal is broken the whole is destroyed – but if jointly and severally if one is broken off it remains good against the other –

11 C 28 b 2 Buls? 2 21 8'

Cuh. Eliz 520 576

If two distinct obligation are written on one piece of paper the one is read truly the whole is sealed – the one well read will be good and the one illy read will be bad

If a deed is void as to part of an intire sum the deed is void in toto – because there cannot be a severance of the sum eg. A bond for 20£ is read 20 shillings void as to the whole as well as the surplus of 20£ the whole is absolutely void –

11 C 27 b

Shep 70 2 6 3 b 9 b –

End of Alienation by Deed –

Mortgage by Gould. A

A mortgage is an estate granted to a creditor by a debtor upon condition that if the debtor shall by a certain day pay the debt the debtor may reenter, or that in that event the creditor shall reconvey or to under the phrase more logical the grant shall become void

The Grantor in the case is called the Mortgagor the Grantee the Mortgagee

Powel is guilty of a solecism when he says there are 2 kinds viz vivum vadium and mortuum vadium

Pledges are to be one of two kinds viz dead and living but the ~~former~~ other only is the mortgage — It is usual on the performance of the creditor for the mortgagee to convey — but this is not necessary for the mortgagor may maintain an action of Ejectment on the mortgagee

Pow on Mo 3 & 4 - 1 Inst 205 - 2 Bl 157 Co Than 127 - 249 250 Ch 750

But a reconveyance is the most ordinary way of the mortgagor for otherwise the legal title is in the mortgagee apparently and then for support of the cause

of the mortgagor must depend upon Parol proof.

Mortgage is called a dead pledge as contradistinguished from a living one because if the mortgagor fail to perform the condition the estate becomes absolute and the mortgagee may enter upon it and take possession without any possibility of turning it being recalled by him the mortgagor to whom the land is now forever dead. A mortgage then is an estate pledged by a debtor for a security of his creditors demands and the mortgagor probably means the thing put in pledge as the land and not as commonly supposed the instrument by which it is held.

2 Bl Com 158 Cook 4 4 7 9 2 3 0

The condition of a mortgage deed is called a defeasance and it may be either incorporated with the deed or a separate instrument containing such deed and refer

ing to it — The latter answers the same purpose between the parties as if annexed to the deed and incorporated with the instrument for being executed at the same time it has got but one disposition — But as between strangers it may be different —
Pow m 5
for one not knowing of the mortgage may purchase of the mo gee who from the deed is possessed in fee and thus defeat the mo gor of his lien —
There is a distinction at law between a grant made to secure a mere gift and gratuity and a grant to secure an antecedent debt — In the latter case tender on the day discharges the gees lien but not the debt for that is not satisfied — In the former case the title is not legally vested in the gor by the tender but that which before was incumbent on him is now discharged.
The condition of a mortgage deed was formerly considered as a condition precedent but is now considered as condition subsequent — Pow m 4 & 4 Lit. ant 3. 35 - 9. Co 77. 1 Inst 207 - 209 — 1 Co 22 - 1 Ld Rd 20 Salk 13 Cart. 422

Dower in Mortgage

Formerly if a mortgage in fee was forfeit so that the estate became vested in the gee absolutely his wife was permitted to have her dower in it. To remedy this it became usual to grant for a long term of years by way of mortgage with condition to be void on payment of the mortgage money and thus it remains in Eng-

Pow M. 7. 2 Bl. 150 - 2 Bac. 682 1 Eq ca ab 311 Cruise 61.91 1 Inst 21-3.

In Con it is customary to mortgage in fee for here it is settled that the wife has no dower in the mor

If a bond is given by the gor conditioned for the purpose of the mortgage deed a breach of the condition of the deed amounts to non payment if there is any breach in the condition of the bond and thus works a forfeiture -

Cruise 2 ch 28 Yelv 20. 3 Atk 387 Pow M 10 12

a Mortgagees interest considered the mortgagees interest vests after his death

To whom does the mortgagees interest belong upon his death — doubts entertained whether the money should be paid to the heirs or to his executor who is his personal executor representative —

1 Equity cases abridged 326 1 Chancery cases 88 1 Vernon 170th.

Under certain circumstances it was payable to one or the other but since Courts of Chancery have considered mortgages as personal property it goes always to his executors and not to the heirs — Even if he has foreclosed and not taken possession the mortgage goes to the executor upon the death of the mortgagee but if he has taken possession after foreclosure he has manifested his wishes to consider it as real property and therefore it goes to his heir —

So if a man gets a release of the right of redemption and has not taken possession and dies it goes as personal property —

Vernon 324 Hardw 3d [illegible] 128 283 251-2 187 220

6 Mortgages in whom does it vest the mortgage
The personal fund has been diminished and therefore it ought to be considered as personal property and go to the executor and also another reason is that mortgages are considered as personal property—
If the money is made payable to the mortgagee or his heirs or executors the money may be paid to either of these persons

1 Chan R 113

If however the money is paid to the heir of the mortgagee the heir will in equity be compelled to pay the money over to the executor—

2 Vent 351—Powel 302—

Upon a forfeited mortgage the money is to be paid to the executor— and in this case the heir must reconvey his interest to the mortgagor—

Barnardiston in Chan. 250 — 1 Chan R 113

Mortgage - [illegible]

And if in this case the money has been [illegible] over to the heir he is compelled to pay over the money to the executor —

2 Ven 13. 48 — Powell on M 30

If the mortgagor leaves two or more executors either of them may pay the money and redeem or may do any act as administrator which shall bind the other or others —
1 Equity Abr. 319 —

If the mortgagee dies intestate the mortgage goes to the administrator and if the heir is in possession he may be compelled to convey the mortgage to the administrator —

2 Ver 267 - 193 - 1 Eq. Ab. 328 —

Even though the mortgagor releases to the heir still the heir is compelled to convey to the administrator his estate

2 Vern 193 1 Vern 4. 170

If the owner apprehends the estate to be real it will be real property and the heir will be entitled to it and not the executor of the devisor he having devised this as real to one in fee

Mortgage in whom vested

2 Bur 969 2 Vern 571 Prec Ch 205

So also if a purchaser under the mortgage by the an absolute deed and the estate is redeemed the money paid is considered as real property and goes to the heir of the purchaser for by his taking a deed he exhibited his intention of considering it as real property—

1 Vern 271

And if money is secured by a mortgage is covenanted to be laid out in land the money is considered as real and shall go to the heir because the money goes in the same manner as the articles would if they had been actually performed

3 PW 217

If two persons make a loan and take a mortgage they are not considered as joint tenants — they are not considered as purchasers for if they were they would be also joint tenants—

2 Vez 258 — 1 Chip 58 — 3 PW 158 1 Atk 167 2 Sw 51 — 3 Vez 83 — 3 PW 58 — Vez 5

Mortgagee - Countess right

Right of the goes with after his death

A wife may encumber the estate with a mortgage as well as bar it if by joined in fine -

But if she does not join she is considered as having right to dower

1 Burn 294

A jointress of lands mortgage may redeem them

3 Bac - 228 1 Burn 28 1 Chan 271

1 Burn 191 Powel 271 3 14 8 15 -

So also if there is a settlement not carried into execution but resting in articles only she may redeem -

If however the mortgagee is made to the mortgagor without knowledge of the jointress he is preferred as creditor to the wife -

3 Bac 228 2 Burn 823

If a jointress after marriage join in a fine & a mortgage of the land she must pay one third of the redemption money or if she is in possession she must pay with interest which has incurred during the continuance of possession

1 Burn 191 - 1 Equa abr 89 Gilb Eq 105

If Mortgage & Jointress right

If an old or first mortgagee makes and additional loan he holds against the jointress if he does not know of the jointure at the time of making the additional loan—

1 Vern 16 — 1 B. 119

A jointure settled in mortgaged land is only void

Cowp 281 — 711 2 East voluntary att—

If a husband promises by bond to give his wife a certain settlement if she survives him she may redeem as creditor after his death—

If those who have the title refuse to redeem then the the Creditor may redeem—

Pre in Chan 237 2 Vern — 188

If a husband takes a mortgage to himself and wife she if surviving is entitled to the legal interest provided there are sufficient assetts to pay his creditors—

2 Vern 683 2 P.W. 264 Vern on M 317 366

Mortgagor's wife is not entitled to dower

[illegible] estate which the husband acquires in wife's mort-

1 Atk 606 — 3 P Wms 229 Talbot 138 — 2 Atk 525 — 10 Ves 138-161

1 Brown Chan 326.

This rule contemplates a mortgage in fee before marriage — if after marriage she has dower — 2 Coke 94 english rule —

In England as well as here the wife is entitled to dower in the reversion expectant of a mortgage to be determined by a certain time. — See in Chan 133 — 2 Term 403.

Sec 2

Mortgages of a femme coverts estate or the husbands interest in his wife's estate

A husband by marriage alone no other interest than an estate for his own life by curtesy — he therefore cannot make by his sole act which shall bind her or her heirs longer than his own life. — At com-law the rule is the same if she joins unless by a fine or common recovery. —

1 Inst 851. — 2 P Wms 7 — 2 Powell 57

Mortgage

In Con^t a wife by deed may make convey all the interest in her estate

Hal Con 205

If however she does join her husband by way of mortgage she may bind herself and her heirs

Powel 337 Fal 41 1 Eq ca ab 61-2 Ver 61

Acts of the wife after coverture which amount to a reexecution or redelivery will bind her notwithstanding coverture —

Doug 53 Cowp 201 Peake ca 154

2 P W 127 2 Vezy 526

If a wife's land is mortgaged to secure the husband debt his personal property shall be taken to discharge the debt though in exclusion of his legatees for it was an advantage to his personal estate and ought to be repaid him out

1 P W 264 2 Vern 604 689

c

Mortgage - notes mortage

Though the wife by fine encumbers her jointure yet she does not absolutely part with it because if the encumbrance is paid off she has her jointure and she loses

2 Chan c 164 1 Vern 213

If a wife joins in encumbering her own estate to discharge her husbands land she is entitled to assets out of his lands after death and stands in the place of a mortgagee to his heirs

2 Ch 384

If a woman holding a mortgage on another land and marries and the husband makes a settlement in consideration of her fortune the settlement is a purchase of the mortgage and if he dies before her the property she brought him goes to his executors or personal representative

2 Vern 507 1 Eq cas abr 68

Mortgage

But this does not hold in case of voluntary settlement made by the husband after marriage because such settlement does not purchase her property-

2 Atk 421

And a settlement in consideration during coverture of an annexation of her fortune this settlement is not a purchase of that accession

2 Atk 448 Pre in Chan 63

But if a settlement before marriage is expressed to be in part of the wife property it is no purchase only of that part so named

Pre in Chan 63 1 Eq abr 70

An executory agreement to settle a jointure is a purchase though the settlement is not made before the husband dies - as considered in Equity what is partly done is wholly done. 1 Equ ca 7

Mortgage

Cont eq ca 70-

And a settlement by the husband is no settlement if the settlement falls short of the ~~so~~ value agreed upon

Vigneracke 68 2 Vern 68 2 Freeman 102

A husband may always make a wifes mortgage his own if he pleases thus if he takes possession or what amounts to possession if he sells it &c he makes it his own

Pre in Chan 412 2 Vern 507

1 P Wms 58

But an alienation of the wifes mortgage by the husband is not a reducing it to possession and the title unless it is for some valuable consideration -

Thus a gift of her mortgage is not good to the grantee -

The reason is obvious - if for some value the consideration - she and her children may be benefitted thereby but no benefit can arise from a gift

2 Vez 170 2 Vern 407 Pre in Chan 108

If the creditors not taken possession with the husband
of the wifes mortgage the court
of equity will not relieve her ag
ainst the attachment

1 P W 458 3 ib 197

If the husband becomes a bankrupt
& the wife retains the mortgage deed
the the Court of Equity will not
compell the wife to deliver up the
~~Mortg~~ title deed because the creditors
and herself are upon an equal footing
and the one who has the title of course
determines in his favour an equal estate
1 P W 382 459 2 P W 316

But if the assignment is made
for a valuable consideration to to
an assignee she is compelled
to give up the title deeds - because
he had a right to sell it for a valu
able consideration and this is no more
than necessary but right -
2 Burn 270

Mortgage
And an agreement by the husband to deliver the mortgage of the wife as a security of his debt will bind the mortgagor pro tanto, for the same reason

2 Atk 207 2 P W 302

Out of what fund shall the mortgage be redeemed after the death of the husband +

Gen rule – the fund which has been increased by contracting the personal debt shall be taken to pay the debt

On his death his personal property is first taken to pay the debt –

If an equity of redemption is devised to a son the redemption money must be paid by the executor and not by the heir

Lathr 2.149 Ent 57 3 W 358 Pre in Chan 61
Eq ca abr Vol 269–

And though there is a bond given to pay the debt still the executor must pay the debt if he has assets enough for the benefit of the heir

of mortgage
The same rule ~~rule~~ holds with regard
to the Devisee

Pre in Chan 277 1 Atk 487

If the mortgagor bequeathes his per-
sonal property among his relations
still this must go to pay off the mort-
gage first - this is only in residuary
legatees - but in a devise of specific
or general legatees the case is different

Pre in Ch 82-477 Talb 52nd 2 Vern 707th

The personal fund is always supposed
to be increased by a mortgage at mortgage

Residuary legatees are postponed to the general
or specific legatees where the mortgagor
has not directed otherwise

1 Vesey 51st

And even though the mortgagor makes
his real estate liable yet this charge
renders the real estate liable only if
the personal fund is insufficient
But if the real estate is devised to be
sold to pay my debts different

1 Burg 51 1 Lev 203 2 Vern 708 1 Eq ca ab 251

This general rule is not addmitted ~~is not~~ to prejudice the simple contract creditors or general legatees in favour of the heir. For simple contract creditors because bond creditors bind the heir.

Ves 377 & 358-6 Pow 531 P.W. 923

And if the mortgagor have simple contract creditors and bond creditors and the specialty creditors take the personal property and exhaust it, the simple contract creditors take of the real estate from the heir pro tanto that is for so much as the specialty creditors took of the personal.

because the bond creditors may take of the real estate and do not but take the personal the simple creditors must have recess somewhere and hence in the real estate thus

same authorities as before

The same rule holds in favour of the simple of bond creditors against

the devisee — meaning ordinary devisee

Fol 53

Contra if a mortgagor dies and devises his mortgage to a specifical

1 P Wms 403. Pow on Mort 379, 382, 384, 391

When the descent is broken and a devisee is a specificate the heir is entitled to the benefit of the last rule —

No one can take under the will as a ~~together~~ devisee who ~~he~~ can take as heir at law —

A in fee simple devises to to his son in fee — B does not take as devisee but as heir at law —

But if A ~~in~~ in fee devises to B in fee tail here the descent is broken and he takes as purchaser

Salk. 11. 62. 1 P Wms 681

The heir at law is never entitled to the personal property in exclusion to other general legatees because the legacy is specific.

1 P W 93

money may be the subject of a specific legacy but it must be identified — not otherwise will it ...

Estates upon Condition -

An estate upon Condition is one depend-
ing upon some uncertain event by
it may be created enlarged or defeated
there are two kinds - Express and Im-
plied

A condition Implied is one arising
out the ~~condition~~ estate itself. -

An estate upon Condition Express
is one to which there is annexed
some qualifications and of these
2 kinds - Precedent and Subsequent.

Implied Condition are always
Subsequent - Gilbert 378 Coke Lit 215. 2 Bl C 152

Express may be either -

A precedent Condition is one which
must be performed before the estate
can vest -

A subsequent condition is one by
an estate already vested may be defeated

Gilbert 325 1 Inst 217 2 Bl C 15

There is a difference between a common con-
dition in deed and a limitation (called
a ~~limitation~~ condition in law) thus then

words so long as while till expressing duration are words of limi-
~~tation~~
But these words 'upon condition' so that, provided & c. are words of condition in deed or contradistinguished from words of limitation
The difference between these estates is important.
Co. Litt 380 3 Shk 341,
2 B C 155 3 Shk 341
If the word is a limitation the estate vests immediately on the happening of the contingency ipso facto and of course —
And this estate is not voidable but void
But if the word is a condition the law permits the estate to continue beyond the condition unless taken advantage of by the remainder man or heir or donor — then the estate is not void but voidable — the remainder man may take advantage of

of it if he pleases but if he does
not it continues
To the last rule there is one excep
tion — If the breach is to ones to
a third person — then the word is
construed a ~~limitation~~ limitation — and
on the breach the estate shall
ipso facto ~~not~~ cease and go im-
mediately to the remainderman
whether the land lord chooses or not
otherwise the third person would
be remediless — 1 Leon R 62 1 Roll Ab 411
Cro Eliz 205
If a lease contains a clause authoriz
ing the lessor to reenter on nonpay
ment of rent — an actual entry is not
necessary to support an action of
Ejectment — A fictitious entry is
sufficient for that purpose — because
by law the Deft is obliged before
he can defend to confess entry ouster &c.
Doug 481 Latwy 541 Salk 259
It was formerly thought that a
condition in a lease that the lessee
should not assign the lease

was void — now decided to be good —
for a man should be disposed of his
own property & therefore an assign-
ment ~~of a~~ by a tenant is a forfeit-
ure ~~it is void~~ — 2 Atk 219 2 B Rep 780
2 Sh 138 & no 57 Bo 07
Hebert 70 1 Not 04 no 2 2 Bl 2 Com 9-11

A lease to A with condition that his
ext or Administrators shall not
assign is good — B. Sh 1410
2 Sh 2125

A condition that if the lessee become
bankrupt the lessor shall retake
is good

Also a condition that the lessee
shall not go to pay debts is
good — for this would be an assign-
ment and therefore a forfeiture —
2 Sh 133 6 no 584 & 1 20 1 2 Atk 219.

Where one takes a term with condition
that he shall not assign the —
an ineffectual attempt to assign
will not forfeit it for the
lessor was not injured —

Real Property
5 Th. p. 24 & 64 –
If an express Subsequent Condition is impossible the condition is void and the lease is good – So also if such Subsequent Condition become void afterwards the rule is the same the estate is absolute and the Condition void –
So also if it be made impossible by the Grantors own act – for the law does not require impossibilities – 1 Inst 201. 206 217 + Bramble 210. Pow on Con 2 ~~80~~ 61 262 2 B C 157
Finally if the condition be contrary to law or inconsistent with the nature of the estate – the Condition is void and the estate becomes absolute 2 Crui 7

Conditions Precedent which are impossible or unlawful are in themselves void and never vest the vest the estate. for no man can

acquire an estate by an unlawful act or be benefitted by his own wrong
The performance of Conditions is
what is called matter in Fact
being a thing which may be
proved by Parol and is no con
tradiction to the writing

Considered 9/11
Powell Mortgages 5 Ed.

e Mortgage

A specific legatee is one to whom some specific property is bequeathed in exclusion of all other persons—

1 Eq ca ab 298. 1 PWM 7th 539. 2 Vesy 422. Ibm 380

Sec 8

Though the mortgagor devises his estate with the incumbrances thereupon yet if there is no other words to show that the real estate should be holden to charge the debts upon still the mortgage will be free from incumbrance

2 PW 386. 1 Bron Chan 252. 407.

And if there appears on the face of the devise a clear positive intention that the mortgage shall be unincumbered the personal property shall not only be taken to pay but if insufficient to pay then the real estate shall be sold to discharge the mortgage debt for this seems to have been the manifest intention to free the mortgage from any incumbrance—

2 Atk 424

But if a mortgagee sells or assigns the mortgage the heir or the assignee has no claims to the personal

Mortgage - How interest is regulated
assets to discharge the debt upon the
death of the assignee -
Nor can the devisee of the assignee
have any assets left by the assignee to
discharge the debt -
1 Bron Chan 107 454 Pont 410 412

And if the money due on the mortgage
is not punctually the debtor & the owner
of the right of redemption the land
mortgaged shall bear the debt and
not the personal assets of the deceased
who purchased because his person
at land has not been encreased -
1 Bron Ch 58 Vern 29

Rules regulating the Interest -
Lawful interest under the statute
in England is 5 per cent but Parliament
may 7 per -
Reserving more than lawful interest
at makes the contract void
but does not incur the penalty

receiving more ~~doe~~ incurs the penalty but does make the contract void

2 Mod 307th. 4 Burr 2253 Doug 223
2 T.R. 241 1st 3 do 534th 7 do 184th

If a mortgage is given to secure more than lawful interest the mortgage as well as the personal promise debt is void-

3 Atk 154 3 Atk 727th 1 Vez 428th

Once said by Ld Hardwicke that if a mortgage is drawn for 6 per cent and the mortgagor pays 6 the mortgage is void— this will not make any contracts void per se 3 Atk 154

Difference in Chancery between an agreement by a mortgagor to pay 4 per cent with a clause to pay 5 if the contract is not punctually paid and a similar agreement to pay 5 with a clause to pay 4 if punctually paid the latter enforced in Equity-
Perfectly nugatory says Gould-

Mortgagor how entitled accumulated
Income the effect may be produced
by either form so if one will not
answer, the other will but it is
settled and cannot be overthrown

Pre in Ch 108 Barn 481 3 Atk 620

And if a mortgage is given for 4 per
cent and the mortgagor covenants
that if the money is not paid punctu-
ally there 5 per cent shall be paid is good -
Because the sum is liquidated
and the Court of Equity will enforce it

Pre in Ch 101 note 2 Vern 134

And a clause in the condition that the con-
cert shall be void upon payment of
performance if indulgence is given
to the mortgagor by the mortgagee
because the penalty is liquidated is
good 3 Burr par ca 1338 - 1 Wms 2.

Compound interest is not allowed
even if the agreement to pay compound
interest -

Pre in Ch 110 2 Atk 371, 1 P Wms 532

+ Mortgage Interest thereupon stated &

But if the mortgagee assigns the mortgage with the concurrence of the mortgagor the assignee may collect interest upon all the money paid to the ~~assignee~~ assignee by mortgagee by the mortgagor

1 Vern 152 2 Ch cas 57 - 2 Vern 135

But if the mortgagee sells without the concurrence of the mortgagor the mortgagor only is compelled to pay the legal interest

2 Atk 371 1 Vern 108"

Still if there is an intention between the mortgagee and assignee merely to make the mortgagor pay comp and interest although the mortgagee cannot still the compound interest will not be allowed

1 Eq ca abrid 329

And when an account is made out by the mortgagee between him and the assignment after assignee this is not sufficient to bind the mortgagor to pay compound interest

1 Vern 108 Pre in Chan 110

But the report of a master in Chan computing the interest converts the interest into

Principal

after the Interest now regulated computation - because this is in the nature of a judgment in court -

1 P Wms 478. 480. 4 5 3 B. 7 6 Pre in Cha 510
3 Atk 722 2 Equitable ab 530

But a Master account against an infant mortgagor does not regularly convert the interest into the principal - the reason is because the infant has been guilty of no negligence and this

2 Vern 392 Littleton 412 La Ray 25th 3 Br Plea 55

Contra -
If an infant is Pltff to redeem, the masters computation converts the interest into principal -

2 Bron Par ca 247

And if an infant agrees to pay compound interest and procures a benefit for himself by this agreement even though defendant this contract is good -

~~[illegible]~~ 1 Eq ca abd 287 Vern 437 - 8

Mortgagor assigning an account which admits so much interest due does not add the interest to the principal

[illegible] 82

Mortgage - Interest how regulated

And an express agreement to pay interest upon interest is deemed hard and not allowed - but if after the interest has accrued the mortgagor promises to pay interest upon interest this is good against the mortgagor

Salk 449. 2 Atk 381.

Tenant for life of the equity of redemption is compelled by the remainderman to keep down the interest -

Though the remainderman cannot compel the tenant for life to redeem - but the remainder man may buy the mortgage and then compel the tenant to redeem one third or quit

Gilb eq ca 69. 2 Eq ca ab 591. 1 Ch ca 223
Pow 121. 442.

But a tenant in tail is not compelled by the remainder man or reversioner or issue in tail to keep down the interest because 1st the estate may last forever 2d because the tenant in tail could bar their claims by fine or common recovery.

1 Pow 477. 478. 3 PW 235.

Interest how Regulated

But if a tenant in tail is an infant his Guardian in possession may be compelled by the reversioner or remainder man to keep down the interest because during his minority he cannot bar their claims

Salk 507 2 Atk 422 Vez 477 481

But if a tenant in tail does keep down the interest the remainder man shall have the benefit of this voluntary payment and neither them nor their representatives shall be bound to pay the money advanced by the tenant

Vez 427 1 Bron Chan 218

If a first mortgagee enter upon the land and permits the mortgagor to take the profits, the profits shall be applied to the payment of the first mortgagees debt in preference of the 2 mortgagee — because he deprives the 2 mortgagee of applying these profits to himself — Pr Ch 30 Atkins 2 [illegible] — 5 Vez 553

9 Mortgage — to whom paid —

When the mortgagor gives the mortgagee a bond the ~~bond debt may be paid to~~ person to whom he intrusts the bond has the right to receive the money and discharge the mortgagor But a person possessing the mortgage deed has not a right to receive any more than the interest —
For paying the bond discharges the debt

Salk 153 1 Vern 152 Prec in Chan 209
1 Eq ca ab 145

If a mortagee refuses to receive the money for the debt after forfeiture he loses the interest after the tender provided the mortgagor gave 6 months notice

1 Eq ca ab 93 Bunb 454

But here the mortgagor must make out that the money has always since the tender been ready and that he has paid no profit from the use of it if he has used it this destroys the tender

2 Vern 278 2 Chan ca 200

Tender how made and what

There must be a strict legal tender such as would avail in a court of Law 2 Ves 372 & 3 Atk 902 Eq cas Ab 323

Where one has holden that a tender of bank bills was good when the mortgagor made no objection and the mortgagee promised to exchange them if required 1 Eq ca ab 316 3 Bac 669

The debt must be paid or tendered to the person of the mortgagee if no other place is appointed for this purpose — tendering at his dwelling house in his absence is not good

1 Ans 210 & 2 Eq ca ab 610

But if a place of tender is appointed tender must be made at that place agreed upon in the contract

1 Eq ca ab 22 5 Bac Ab Tender &c

But if no place is mentioned and the mortgagor appoints a place to

When the money must be paid &c.
notice is given to the Mge and the appointment is reasonable, and if the Mge makes no objection, then this plea is good
2 P W 673 &c

And if the mortgagee dies to avoid the tender a tender at the house of the Mge is good - this supposes no place appointed 1 Chan ca 29

After tender duly made no interest accrues

But Contra - If the mortgagor has doubts as to any legal question he must have time to take counsel before the tender should bind him and prevent his receiving interest

Bett 19 2 Eq cas Ab 73

An interest reserved on a mortgage may be altered by a parol contract

A Deft may rebut equity by parol evidence in Chancery - But a Plaintiff cannot take advantage of this parol evidence

Powell 208 not correct
6 Bro Parl ca 441

Interest when allowed?
Method of accounting

The mortgagor is never bound to account for the profits during his own possession — the mortgage is only a pledge — he pays interest but not profits. 3 Atk 244. 2 Ves 107.

Doug. 202

A mortgagee in possession must account for the profits and the net annuals must be applied to reduce the mortgage debt —

2 Atk 594 1 Vern 270

If a mortgagee mortgages a mortgage estate to him self he is entitled to no allowance as bailiff or otherwise and if there was an agreement that he should have such allowance is void but if the mortgagor has some bailiff the bailiff shall be paid —

1 Vern 310 3 Atk 518. 2 Atk 120

If a mortgagee assigns the mortgage to an insolvent person without the consent of the mortgagor he is responsible

2 Mortgage

1 Eq ca abr 328" 3 Bac 658 2 Chan ca 3

A mortgagee is accountable only for the actual profits received unless it appears that he might have got more but for fraud and wilful neglect— Thus if he has leased the land for a less sum than is necessary or he might have got more then in this case he must account for more

1 Vern 45 276 1 Eq ca abr 328
3 Bac 657

If a mortgagee takes possession and keeps other creditors out of possession he will be charged to them with all the profits he might have recd— else they might be wronged 1 Vern 270 Pre in Chan 3 &c
3 Bac 658

In this case he is not chargeable even in favour of the subsequent incumbrance untill he knows of such subsequent incumbrances

2 Chan rep 290 Pow 408-9

If the mortgagee permits the gor to hold the land against subsequent incumbrances he will be chargeable to such subsequent incumbrancers as they might have taken possession but

Mode of accounting -
for the fraud of the mo. gagee

1 Vern 207 3 Bac 658

If after the Mortgagee has assigned and after this a bill is brought against the assignee the gee must be a party to the suit

1 Eq. ca ab 59

In the case of several mortgagees the account taken between the 1st gor and gee it is good against the rest unless some collusion is proved

1 Chan ca 299 200 - 3 Bac 659

An account between the gee and nee will not conclude the gor -

1 Chan ca 68

A remote assignee is not bound to account for the profits which accrued before his own time - the reason is the difficulty of taking these account succession accounts - the previous profits must be sunk in agreement and go to reduce the mortgage interest -

1 Eq. 102 1 Chan ca 392

Two modes of taking account

1 By annual rests applying the annual profits over the interest to sink the principle

2 To bring all the amount of profits into one sum and all the interest into one sum and then make a settlement – This is not so advantageous a method to the mortgagor because the former method sinks the yearly interest by sinking the principal – When the amount is greatly over the amount ~~to the~~ of interest annual rests are made by Equity but when under the latter method is adopted –

2 Atk 534

For Assume

A is in order to the year that unless he shall pay the sum and interest before such a time he shall be forever foreclosed from his right of redemption

2 Ves 198 Prec 455

Foreclosure

If the mortgage is in reversion Chancery may compell a sale to discharge the debt — Pow 475 340th.

If a gee is made to several persons all the gees must be made parties to a suit to foreclosure —

1 Bron Chan 308th.

A court of Eq will never decree a foreclose untill the mortgage is forfeited — untill this there is right in Equity since the gor may pay before the day of forfeiture —

2 Lunt 365 - 1 Bern 232

On a bill to foreclosure the title of the gee cannot be investigated: does not mean that the gor cannot say the gee has no right as gee — but only means that the legal title cannot be given by Equity

2 Chan ca 244 Powel 470

A gee may pursue all his actions at once — a bill to foreclose — ejectment and suit upon bond at the same time

i Real Property- Mortgage- foreclosure

2 Atk 324 Doug 210

In Eqy if a mortgagee recovers judgment upon the bond he may have his execution avoided upon the right of redemption.

But when he pursues his actions at law pending a court of Eqy may intervene by injunction to stay the ~~injunction~~ action of ejectment

2 Atk 324

A court of Chan will refuse a decree if man. perpetual injury will follow- because it is entirely discretionary-

2 Vern 271 2 Salk 634

If upon a reference to the master to take an account between the mortgagor and gee

2 Atk 207

If on the death of the mortgagee his heir brings a bill to foreclose the bill is demurrable because it belongs to the executor who takes all personal assets

1 Chan Ca 58 2 do 29 Rep 470

Real Property - Mortgages - Foreclosure

The mortgagors ~~to~~ executor need not be joined because their right to redeem belongs to the heir

3 P.W. 338 notes - Prec 474

But though the gees heir has no right to foreclose if by [illegible] intervention of the court this is good against the gor granted it but the personal representative may compel the heir to pay the debt or convey the land -

2 Vern 367 & 195 1 Vern 360
1 Equ ca ab 328

On a decree to foreclose the time is computed by calendar months -

2 Eq ca ab 685

A decree foreclosing the tenant in tail of an eq of redemp will bind all the issue and remainder men - because the tenant in tail might bar the others by fine and being in his power he loosing all his right so all others with his - 1 Chan ca 17 Prec 381

But if there is a tenant for life of an eq of foreclosure
redemp. and there are remainder men
he cannot bar these remainder men because
he could not bar the remaindermen or man

2 At 405"

If there are several incumbrancers
and one is omitted the party may obtain
a decree against those that are joined
if 2 are joined and the 3d is omitted then
the 2 are barred the 3d not -

2 Vern 518 + 666 185

When all the mortgage interest is decreed
to foreclose the decree may be for
foreclosure

1 Eq ca Ab 313 - 1 Chan Ca

An infant may be foreclosed but then
a day is always allowed to shew cause
against it 6 months or any pretty long one

2 Vern 392 Pre in Chan 135 Vern 295
2 Vern 342 479

Always contains a clause that it be
binding if the infant does not shew
cause within 6 months why the decree
3 Bac 148 should not stand

foreclosure

And if he does not show cause he is absolutely foreclosed if process is issued upon him

3 Bac 148 2 Ch 532
1 PW 202 2 405 3 Bro pa 307

But the instant obtaining such a grant is not allowed to go into Court or make payment all that he is allowed to do is to show cause why it should not go on - he may use any advantage which if used at the time of passing the decree would have prevented the decree passing -

He may show the decree was improperly obtained

3 PW 352 Powell 89

But if a feme sole or her ancestor mortgages land and the right of redemption accrues during coverture the decree to foreclose is peremptory against her - her husband may bar her

3 PW 352 8 Ves 72 1 Ves 302
Eq Ca Ab 95

Forclosure –
upon the death of the ~~gee~~ mortgagee –
This is a kind of Equitable estoppel –

2 Vern 233 1 Vern 148 Salk 250

A forclos^{ure} may be opened by an act of the gee himself – if for instance the gee having obtained a forclosure brings an action to recover the debt he waives his right of forclosure and opens the equity of redemp.

1 Eq ca ab 317 Vern 205 505

12 Brown par ca – 119

Decided in our Superior court

1 Root 202 not law

Lapse of time is always a considerable objection to an opening a decree –

2 Brown ch 111 2 Eq ca ab 121 599
1 do do 414 3 do 315

In England if the mor gor does not pay the money at the time appointed – the decree is confirmed by an additional order but one order here is con –
The court of Chan is always open in Eng here we have stated sessions

Bm 429 5B

Though no day is given him yet one may avoid the decree after conviction for just cause as error or fraud

2 P W 2. 580 3 ar 238

If the mortgagee is guilty of any fraud or unfair conduct in obtaining his foreclosure the foreclosure may be opened - that is he may have the right of redemption -

1 Mod 153 2 Eq ca ab 600.4
2 Brow par ca 394

So where the mortgagee had obtained a foreclosure after the creditors of the gor had informed him that they would pay the money due him - it was opened because otherwise the creditors would have been defrauded

2 Chan ca 170. 2 Vern 611

But where it is opened in favour of creditor or incumbrancers they must pay the cost of obtaining the foreclosure to the mortgagee obtaining it

2 Ver 185 -

The time limited for the payment of the debt may under special circumstances

be enlarged - where eg it appears the property is worth much more than the principal and interest amounts to -

Barnardiston 221 - 2 Eq ca ab 615

And if the mortgagor is prevented by any inevitable accident of paying the money he may obtain an enlargement of time -

1 Chan ca 63 Powell 494[th]

A decree is never opened in favour of a mere volunteer - or devisee because he pays nothing for it and of course looses nothing -

1 Eq ca ab 317[th]; Chan ca 217[th]

In Welch mortgages there never can be any foreclosure - this is always redeemable at law

1 Vern 2, 05. Pre in Ch 423
1 P W 291 2 Vern 707[th]

If the 1 gee obtains a foreclosure against the 2 gee and the 1 devises it to the gor the second has a right to redeem

Devises by Judge Reeves

Descent and Purchase two modes of acquiring property

Descent is when there is no will to regulating the descent but one takes as heir at law—

Every other mode is by purchase and this is chiefly by Devise and by purchase in the common acceptation and use of that word.

By Devise

Dev and Legacy used to meant the same but the former (the subject matter) is that and estate of real property whereas Legacy is personal property— The term "Legacy in land" is not uncommon though improper

The person who takes under the Will is Devisee and The person who takes personal property is called Legatee

Personal property does not pass to the heir but to the executor he has at it must and the heir has the legal title but not the beneficial title—

Executor has nothing to do with real property— Some statutes give them this right and for this right may be enforced Lands are not subject to pay the debts unless made so by statute

Devise-

If there is a request in the will to have the executor sell the lands he may sell but not as executor but as master- So that an owner may dispose of his property absolutely by will or to some person as trustee to sell it for him after he is dead

History-

Before the Roman invasion Devises were in use of real property and well understood- probably rec'd this information from the Romans- By the establishment of the Feudal System abolished all alienations of land- but by degrees this wore off and now it is usual to alienate- Devise is not authorised by Common law but by Statute-

At first it was customary for men to convey away lands to uses but by the Statute of Mortmain this was prevented- and then it was contrived to devise away the use- and thus the power became almost universal but there were many inconveniences which arose from this practice

By the statute of Hen 8 Uses were
destroyed and the person who was Cestui
took a fee - A to B for the use of B -
B takes a fee - Law was and end to Devises
By 32 Hen 8 gave the right to Devise -
But at the time of the severity of these
times were particular Estates could
Devise - [illegible] a privilege for some
reason as they had done as a means
to the Commencement of the
Joint Tenants however could not devise
by this Statute -
Construction of the Statute -
All persons could devise real Property
by the Stat who could before devise
personal property -
Stat Charles 2 has been copied by most
every state in the Union - that is certain
terms we have been made use of by us as
were found in that Stat - and as that
the decisions upon the construction
of that Statute binds us -
Construction of words in Devises
different from the construction

of Deeds- the reason is that more technicalities were used when Deeds were first used or by stat-

You cannot convey a fee by deed without the word Heirs- but you may convey a fee by Devise without the word Heirs-

Gen' rule

Any words indicative of the testators meaning is sufficient.

An Estates to John Hiles and his assigns conveys an estate a fee tail

All my estate- all I am worth conveys a fee-

A testator means to pass it by words if they are consistent with law.

A man may create any estate by privilege but he can by deed- and as other Candles must be all burning as the law says to convey a life estate that the lives must be given to person in esse

Then if a person can devise convey any estates that might be conveyed by estates if these technicalities are omitted

Devise

Technical expressions yield to the will of the Devisor because says the law the Devisor is inops consilii But in Devise the Devisor is supposed to have counsel and the technicals not yield to the will or intention of the Devisor

An executory Devise cannot be conveyed by deed or execution

By this Freeholds commence in future which the Common Law does not know

The distinction upon real & personal property is different

No real property does not pass that is acquired after the making the will but personal property can pass if it is acquired after making the will the reason is the difficulty of distinguishing the kinds of personal property that make this distinction

But in the case of real property this may be distinguished but by republication after acquired

Devise

real property will pass because all the repub lishment his speaking at the will of the testator at the time of making this republication -

Wills are operative at the death of the testator -

They may be revoked by any "animo revocandi" without having at Com Law. 1 Bacon 187

What may a man Devise -

May devise a fee by the words of the English Statute only a fee could pass but by Ch. 2 a life estate during the life of another man is devisable -

Here we have repeal the Eng Stat only substituting "all real estate" for fee simple - so that an estate "pour autre vie" may be devised -

No estate tail in Con. strictly so called A man may here however create an estate to a man but then his heirs will

to be the estate in fee - So that by our statute on estate tail can be made for only one life - The reason the law does not consider the first tenant for life is because of the privileges & incident to this estate such as dower -

Can a man devise a possibility? a great question & more early opinion that it could not be devised - but now different opinions - it may be devised as well as a fee

1 B R 254 1 Mod 172 2 Bous 118 1 Hen 130

Per on Dev 25

Lex Loci governs the will - not as with personal property - the lex loci is where the lands lie - in general the lex loci means the place where the contract is made -

No limitation upon a bond in N.C. but 17 years - So that a bond Creditor in N.C. states if the bond has run 17 years and the Debtor moves into this state (Conn) the creditor cannot recover on the bond - Lord Ind

If the contract is not good when it is made but good when it is made it will be considered as a good one in suit at any court - but when a contract is made in one country which is malum in

see and prohibitory when the action [Devise written above]
~~is brought~~ it will not be ~~collected~~ supposed—

December 26th M. — 2 Lecture —

No provision in some states except what the Statute of Henry 8th gives them—viz permission to Devise a fee this means not a fee-simple in possession—

A man cannot devise a life estate unless authorized by Statute—Common law gives no right to devise real property—

29 Charles 2 is copied by every state in the Union—this is the foundation of all the devises since—

Certain laws in force and good before 29 Charles 2 viz the following points determined under the Stat of Hen 8th—

It was much questioned whether that will was good if ~~made~~ written at different times: It is good—

1 Bur 548 Dow 12-33

another point

Contended that a will must be a single instrument and the last will was a revocation of all the rest

But it was decided that there might be more wills than one provided they did not clash. But if any subsequent will is inconsistent with any former will the latter will operate as a revocation of that former one with which it was inconsistent—

Prestn 545. 553

2 A case somewhat inconsistent—
A wills black acre to B in fee simple—
He afterwards marries and wishes to make some provision for his wife and therefore he makes another will giving black acre to his wife for life—the former will is good—the fee vests in the heir and a life estate is carved out of it.

Cro Eliz 721—1 Pow 187.

This was a revocation pro tanto—

3 A will may be made to take effect according to some written instrument.
Codicil never revokes a will—it operates pro tanto—is merely an addition to the will—and adds or subtracts as the case may be from the former dispositions in the will

Does one Codicil destroy the other? Devise
supposing there are more than one—

Cook Lessee 1844 1 B M 630

Another point— not law.

A letter from a man at sea to his
friend stating that to be his will—
was then good— not now—
a Man also directs an attorney to
make his will he makes it and
carries it to the testator to sign he
is insensible— the will never the
less was good— not now—

1 Lib 715

A gives to his executor a sum of money
to pay to some person to whom
he would appoint— but does not
appoint any person— the money
is a residuum and goes to the Lay
otee—

The requisites of a C[illegible]—
requires all bonds executable by Custom
contain the statute of Hen[illegible]
in writing

Devise - Requisites of the Stat Ch 2. 29

2 This writing must be signed by the Devisor or by some person under his direction

3 It must be attested and subscribed by Witnesses in the Devisors presence

4 The number of W 3 or more

5 They must be creditable witnesses

The whole will must be present at the time of attestation.

3 Burr 365 3 B 718

It must be done in the actual presence of the testator - Doug Wrights -

One may give another power to devise his lands - But the last will must have all the requisites of the former and the devisees are supposed to take under the first devise - the first will passes the property - the 2d is not in fact a will

2 PW 740 2 Atk 6 B 285
2 Vez 288

Requisites

1 All wills must be in writing - How does this differ from the statute of Hen 8th

12"

2 It must be signed by the Devisor

It was questioned whether if the will was written in his own hand writing it was good without signing.

Now decided if a will is written by a mans own hand and he puts his name to it in any place whether at top or bottom it is good.

Judge doubts this! for perhaps he is not perfectly satisfied and would after consider it and then sign his name —

3 Mod 219 3 Lev 1

If a will was sealed and not signed was it good — among 7 Judges 3 thought sealing was sufficient &c

2 Stra 764 1 Wils 313

A subscription at the top and part written by the testator himself and partly by his direction — is it good? not decided —

Judge Reeve thinks it would be good

Devise

Tue 3d December 18— Thursday

When a codicil is made referring to a will and telling where it may be found and is duly witnessed — does this legally contemplate the will — Judge Reeve says he does not see why it should not be a sufficient contemplation of the will to make it good —

Jermyn 6 B 4

It must be certain that the codicil contemplates the identical will —

Ld Bolingbroke 1 Burr 518 will good — In this case the codicil respected only the personal property and therefore they say the will was not duly wit[nessed] which

Credible Witnesses — questio vexata

Can Legatees witness a will?

Lee and three persons prior years ago

Ld Mansfield decided they were witnesses provided they released their legacy

vs Doe in Pratt —

Decided here 3 to 2 not witnessed

next time 3 to 2 that it was - this latter was reversed -

I may here think the time of cross examination is the time to determine the credibility of the witness -

But their interest is contingent and not such sufficient to exclude their testimony - no interest vests until the death of the testator - he may revoke his will and change their interest must always be contingent

Nothing must be competent and the word credible means only this and does not refer to the credible interestedness -

They must be men of good character -

By releasing his interest a witness may always be admitted when this was the cause of exclusion.

The court determine this credibility and not the jury.

Besides the release does not, even at the time of making it, vest whether any thing is coming to him -

Devise- requisites under the Stat ch 2-29-

If A B do devise - this by an attorney's not signed - doubted whether it is good - the testator did not do it himself but he directed it himself.

An exception - a man attempts to sign and faints away and dies - the will is not good though his name is found in another place written by his attorney -

Must be attested and subscribed in the presence of the testator

they attest to his corporal signature - it is said they test to the testators sanity - but not true - they only test the former fact

The 3 witness swore in one case of the testator that he was insane but proved by other witness he was sane

2 B W 500 Bu or Chan 1842 Vez 405

3 P W. 2 Atk 182 -

If a man tells a witness he made this instrument and signed it, it is enough. The witness need not all be present at the same time

What is the testators presence?

The witnesses signed it where the testator could have seen them if he would — &c.
A testator can look through glass —

Carth 87 3 Salk 395 1 Brown Ch 99
Cen 1 Hen 89 — 1 P.W. — Brodsworth
1 Hen 288

If the witness set clandestinely their testification would not be good says Judge
Reeves
1 P.W.

Number of Wit. 3 or more to real Prop
erty Personal property none —
Suppose 2 witnesses to a will and
2 to a codicil — one of the witnesses to
the will witness to the codicil — nothing
3 not good Carthew 95 — 3 Mod 267
A will signed and sealed and not
witnessed — he afterwards make
a codicil with 3 witnesses — not
determined — since the decision turned
upon another point — the will was
absent — but if the will was present
it was good says Judge Reeve —
See in Eden 267 2 Hen 597

Devise Incapability of Wife

Com Dig Devise L 2 a Ny & S Carthew 514
2 Strang 1253 1 Burr 414 doc vo Cody v
Morgan cor Ld Boyle Ld 40.)
Powell on Devises

Comissioners not in Ch 29
Republication under Hen 8 thinks
necessary. This is always under
stood Bac 1150. The usual ceremony
are tantamount to a publication -

Per
Hen 8 th will proved.
If two or part absent the other must
swear to the absent ones signing
If they are all dead then proof that
found writing and taken as genuine
they sawthe attestation -

Powell on Devise ceremonies
For nullis obsequiis

The Executor of the will was proved to whom
an exemplification issued to enable him

A Descent

1 A person dying intestate and having widow and children one third part of personal estate is distributed to the ~~children~~ wife the rest to the issue or their legal representatives each having equal shares —

If there is no widow the property goes equally to the children -

2 A widow without children takes one half the nearest of kin take the rest.

3 There shall be no representation after the brothers and sisters children —

James 2

All advances made by way of marriage ~~or~~ portion are to be accounted.

So money to set up a son in business and for education -

Rules of computation the same of the civil law

1 Vesey 334-335 1 P Wms 2 Vesey 214 Prec in Ch

2 B C 515-20 2 Vern 385 4 P Wms 595 2 Atk 115

Cobb. edit by Hard 28 Lov on Wills 71

Distribution made in descending line

Lutt. Lev on Wills. 4 Burns Eccles. Law

Posthumous child shall take equally with the other children

1 Vesey 100

115 2 Atk 2 Bur 875 1 Vesey 85

2 Vez 218 by stirpes and not by capita where the affinity is equal –
Pre in Chan 54th 3 PW 50th 1 PW 395
1 Atk 455

Repre of brothers continues as in
1 PW 27th

Repre cannot take as repres extends farther than brothers children –
1 PW 35 –

1 PW 594 – 2 Vern 233 cont – 2 Vern 10th
Pre in Chan 28th

All of the same kindred take equally

1 Ver 217 1 Atk 254 Pre in Ch. 527
1 Salk 251st 1 PW 41 2 Vezy 215th
1 Vern 127 – 2 Vern 124 half blood share equally with the whole blood
×1 Salk 289 – 1 PW 53 – 2 Atk 118th
× not born the same as in case

1 PW 50 Collateral affinity whether by father or mother have equal share – Duck 74 Stanley vs Stanley
1 Atk 458 2 PW 341 2 Vez 210

As to Advancement 1 PW 257th
1 PW 538
1 217 th
3 50
Equi cabt 249

Descent: Jany 26th 811—

In N Hampshire as any person they take the same as those in England under the statute of Chas. The mother can in no instance inherit to the children—

The father inherits from the children real estate if the estate did not come from the ~~pa~~maternal line—

"Of the blood" does not mean in the feudal sense

By Com law the real property can never ascend—

If there is no issue and the property came by the paternal line it cannot go the ancestors or relatives on the part of the maternal line — It must be of the blood of the ancestor from whence it came—

Where there is no ~~fiction~~ issue an ancestor is presumed ~~for th~~ by fiction if none really exists—

Seisina facit stipitem

The half blood can never inherit at Common law.

Law in Massachusetts

if any person dies owned or any ways entitled to it shall descend to the children in equal share and in want of issue it goes to the father if any and if not to ~~the mother~~ Brothers and sisters and if not any of them then to the mother if any and if not to the next of kin—

not determined whether the sons take per capita or per stirpes as respects grandchildren nephews &c
Same as in New York
In case of partus si exeunt the father shall take the whole – if the mother had been dead it would have gone to the father and mother
no issue nor father – the mother is made equal to the children and they take per capita –
No issue father brother or sister goes to the mother – vacation from the statute of Charles – which considers
when neither of the former goes to the next of kin – nephews include uncles and aunts –
The computation must be by the civil law by statute –
Those of equal kin who claim ~~and~~ through the nearest ancestor has the property
New Hampshire
To the children – no child the next of kin
If child dies under the age of twenty one goes to the brothers and sisters – if over 21 then to the father no father – then to the mother and brothers and sisters –

Descent

Law respecting descents in Connecticut—
more complicated here than in other states—
In the mean time as under Charles 2d formerly
double portion was given to the eldest son.
This state makes a difference between ancestral
and that which came by purchase
ancestral must come from some ancestor or kin
No issue not always to the next of kin
but to the brothers and sisters.
It must go to the brother and sisters from or of
the same blood from whom it came ~~half~~
blood or whole blood—
If no next of kin then the ancestral estate is
treated as a purchased estate—
purchased estate goes to the brothers
and sisters of the whole blood and their
legal representatives if none to their
parents—if none to the half blood and
their legal representatives—if none to
the next of kin—
but real property may go to father
and mother who hold as joint tenants
but if personal property it goes to the
father only both living
representation goes no farther than brothers and sisters
children—
Possession any right title or interest which
destroys the maxim—like the statute of Charles
every person must take—children take
per stirpes—no children divided equally
among the next of kin—

no representation beyond brother and sister
children -

Maryland - this state adopt the common law maxims seisina facit stipitem - It makes provision for real property of which the intestate dies seised - It also provides that all estates tail made after the statute shall be considered as a fee and descend accordingly -

But if the entailment was to the heirs male of his body it will follow the form of the gift. If to the heirs female then to them -

The Statute says it descends to the children and their descendants and their descendants if any equally. this means per stirpes and not per capita which might be inferred from the words of the statute -

there being no issue it goes to the father if living.

If the property comes from the father and he is dead then to b. & s. there being no children - no ancestors of the blood from whom it came, then to the mother ~~from whom~~ and if dead then to her ancestors though they have no blood of first purchaser -

To the issue - to the father - mother - father of the father - his descendants - Grandfather - his descendants - no ancestors - to the maternal father ~~mother~~ - his ~~ancestors~~ descendants - then - as before

On Remainder and Reversion. by James Gould

The time when estates are to be enjoyed
2 kinds in possession and expectancy—
Expectancy 2 sorts- 1 remainders which are created
by act of the parties 2 reversion which is created
by the operation of law-

2 B C 163[d].

In estates of possession there passes a present interest
and a right of present enjoyment-

Term on Con Rel 1 Bow on Dec 242[d]
2 B C 163[d]

1 Remainder is an estate which is limited to take effect
and be enjoyed after another estate is determined:
Black acre to A for years to B in fee —

1 Inst 143[b] 2 B C 164[th]

An estate in rem- and the preceding estate
form in the eye of the law but one estate- all
the parts are equal to the whole—
To A for years to B for life- C in tail in fee to D all
make but one entire inheritance-

2 B C 164 2 Word 186

Hence no remainder can be limited after a fee
simple because a fee includes the whole in-
heritance—
It is not true even in Executory Dev that a fee
may be limited after a fee but the former
may be defeasible on some condition which creates
the latter

Plowd 29 2 B C 164[th]

In the creation of a rem- the word remainder

ably is the most proper though not necessary -

Fon on Dev 242 Plow 134

Gen rules -

1 There must be some preceding estate to the remainder and is called the particular estate -

2 B C 165 Plow 25 b 24 a
Powell on Dev 242

By this is not meant that no ~~remainder~~ estate may be made to commence in future for estate for years may be and so for in executory devises - 2 B C 165

An estate cannot commence at a future time without a particular estate is not a remainder

A freehold at Com law cannot be created to commence in future - It must vest either in possession or remainder

This has been considered as arbitrary - not so because no freehold at Com law could not create without a livery of seisin and livery of seisin commence in praesenti to dispense impossible absurdity -

2 for a man by creating an estate at Common law to commence in future might ever avoid a real action since there is no tenant in Capite - and at Common law no action real could be brought against any but tenant in possession and more

Remainder not commence in futuro at com- 8
of the freehold -
Com 234th. 5 C 94th. 2 Wil 166
An exception in of a rent to commence in futuro being granted de novo — but rent need not hot cannot be created by livery of seisin.
2 Ventris 204th. Com 2 R 430 1 Salk 577 - contra Word 230

Vested estate is one of which there is a present there is a present fixed right of present or future enjoyment

An estate vested in possession is one of which there is a right of present enjoyment it may not be in actual possession

An estate vested in interest is one of which there is a present fixed right of future enjoyment

Vested Remainder in books always means vested in interest for the moment it vest in possession it ceases to be a remainder

A Contingent estate is one which is to commence upon some future uncertain event - there is no vestment in interest - because this is to arise hereafter - Fearne 2

When to certain a Remainder cannot be created to commence in futuro - it means that,
3 a freehold remainder must pass at the time of granting the particular estate whenever a contingent remainder is created - but the freehold that passes is that of granting the particular estate -

Contingent Remainders e.g. to A when he is one

is born— the freehold continues in the Grantor untill the happening of that uncertain event—

However the reasons why the remainder cannot be made to commence in futuro is now done away for no livery of seisin is now necessary and 2 because real actions are not now brought—

Never obtained in this state—for here is not livery of seisin nor is an uncertain or at least not of time—

2 Wils 165 + 2 Bl 106 165.

To A for years see to B— here freehold is given to B or rather to A for B— that is it ensues to B as it conveys the freehold to B who has a vested remainder

A lease at will will not support a remainder—it is so precarious and uncertain—

Dyer 18—S 6 7—5—Bac 151

If the particular estate is void in its creation the rem intended to be engrafted on it fails for here is no particular estate which is necessary

To the unborn son of A for life to B in fee

2 Hen B 167 1 Ins 298, 2 Roll 211

But if devise is made to one not in esse for life remainder in fee the latter will take by devise though not as a remainder this arises from favour shown to will

2 Wood 179 note Plowd 414

And says Blackstone if the particular estate is good in its creation but is destroyed afterwards before the remainder limited to take effect does vest the rem is void—
This may be true when applied to contingent remainder but not to vested remainder—
As a general rule when the remainder is well created the premature determination of the particular estate does not destroy the remainder—

2 BC 167 – 2 Wood 180–7 180 2 BC 155–6
169 Cro Eliz 205 Jam 209 – 341 2 T
234–244

To A for life defeasable upon not paying rent remainder to B— A does not pay— the remainder is destroyed— But is not this a contingent remainder— the rule is always applicable to contingent remainder and not to vested remainders unless the case put can be construed into a vested remainder

Lud Summary 25. 418

Remainder must commence or pass out of the grantor at the time of making the particular estate—
Not but that the remainder may be granted away but that it cannot be considered as a remainder
It means that the contingent right only passes out of the grantor with the particular estate.

Mon in Dev 242–3 – 2 B C 167. Littleton sect 631
2 Wood – 177 –

6 Remainder

It is now well settled that when an estate in rem- is limited upon some contingency the fee ~~vest in~~ or remainder continues in the Grantor untill the contingency happens

Fern. 200. 276 et 280 & 287

Carthew 262.

It follows that a Rem. cannot be limited ~~on~~ an estate ~~upon~~ now in being because it must pass at the same time with the particular estate —

A conveys today a life estate for black acre — tomorrow he conveys a remainder in fee to B — this is not good. it will be a reversion but not a remainder —

The remainder must be created by the same instrument ~~with~~ that creates the particular estate — Fern 228. 2 Bl 6. 165

Second rule —

The rem. must vest in the grantee during the continuance of the particular estate or eo instante that it determines

this means ~~vesting~~ vesting in interest

Fern 233 —

For as they make but one ~~estate~~ entire estate they must be in esse together — if there is any interval of time between them. To A for life remainder to ~~———~~ unborn son

of B — the son is born during the life
Remainder
of the particular estate — it vests in inter
est upon his birth, therefore it is good —
To A and B for life — remainder in fee to
the survivor — this rem vests so instanti
that it determines in the survivor —

To A for life rem to unborn son of B — the
son is not born before A dies this rem
cannot vest — 2 B C 168[th] Plowd 25[th] Fearn 233.
2 Eq 287-240 2 Wood 179-180

And for the same reason to A for life
Rem to B in fee after a day after the
death of A — this cannot vest because
it makes an interval which the law
abhors — Plowd 25 Fearn 283-4[th]

Upon this last rule viz 3[d] is founded
Contingent remainders —
2 kinds of Remainder —
1 Vested — 2 Contingent
Vested is one by which a present
interest passes to the Grantee though to be enjoyed
in futuro — vested in interest only
2 B C 168 Fearn 1 Powder 348
Contingent Rem are those
which pass no present interest

but which are to take effect upon some future Contingency

2 Bl C 169 – 170th 3 Coke 20
Fem 2-3-4th 2 Wood 191 – 2d 144 1 Bos and Pul 215 – Pow on Dev 250

And by the Common law a Rem to the eldest son of A who was in ventre sa mere he cannot take – 10-11 Wm 3 abolished – a posthumous child may take when the Rem was limited to an unborn son
2 B C 169 Salk 228 2 Coke 51st
2 Wood 200.

Yet a remainder may be limited to one unborn but it must be such a one as might by possibility be born before the particular estate determined

heirs may take from hence
2 B C 16 Fem 175 2 Coke 51
heirs is used as a word of purchase and not a limitation –

1 Coke 55 Vide B 2 B C ...

Contra Rem to the heirs of B – B being unborn – is void – on account of remote possibility – 1 Prest 25 B 184 ... Rob 38 ...

Rem. to John the ^remainder^ unborn son of A is void- for two contingencies - 1 that he have a son 2 and name him John -

Cen 177 2 C 151 2 B C 170

So ^Rem upon a^ a contingency happenening upon some unlawful act event - because the law considers this as a modal impossibility

So a remainder to an unborn illegitimate child is not good because the law does not allow of such limitations upon general principles of policy

Cen 175 Co Litt Eliz 504 -
2 C 51 Plowd 82

4 Gen rule.
Contingent Rem of Freehold cannot be limited upon any estate less than free hold - So A for years to the unborn son of A carries no remainder - with the parti because a freehold must pass at the same time as a chattel interest ags. under estate - but estates for years is a chattel interest
1 C 130 Pray 151 2 Wood 199

But if to A for life and as before - such Rem is good for a freehold does pass a life estate being a freehold - and this tenant for life is tenant to the praecipe

2 B C 171 1 C 130 Pray 151 2 Wood 194

5th A Contingent ^Rem^ may be defeated by determining of the particular estate before the contingency happens upon which it was limited to

11th Eg To A for life - remainder to the unborn son of B - A aliens before B is born void -
2 B C 071th 1606) Fern 241 - on - 248 252 254 258. 262 270 272 -
So a Con + Rem may be barred by a fine suffered or recovery had by the particular tenant - and though the tenant suffer a recovery to himself the same -
This does not hold with regard to vested Remainders. because here the particular estate is determined
1658 Prob Eliz 630th
Salk 224th, 11 Mod 1867 vest Rem not
The mere actual possession does not destroy the Remain if the right of entry continues untill the contingency happens -
1666 - 7 2 Wood 195 - 199 12th Mod 174
2 Ray 810
Under rule 5 vide page 4 arose the necessity of introducing trustees during the particular estate -
To A for life remainder to B in trust during the life of A remainder to D in fee - now if A forfeits his estate during his life - the trustees keeps up a particular estate untill the contingency of A death happens when the Remainder vests in D - the trustees have no beneficiary

title they hold for the use of B — these trustees may however alien their legal estate but the equity still is preserved for the remainder — (Remainders)

2 B C 171-2 1 Fonb 378 5 C 51 Fearne 84. 87 88 95 121-3 152 to 157

See B.

Here we had a decision of the Question: lands are devised for the payment of simple contract debts and legacies — not enough to pay both which shall be preferred: — Simple contract debts a man must be honest before he is liberal — authorities divided — but this way if either — (says Lord Keeper right contrary)

Whether a Remainder is vested or contingent depends upon its limitation — does not depend upon the probability that it will take effect in possession neither upon the improbability — for the former may be little and the latter may be very great yet it may be vested —

To A in tail remainder to B in fee — A may die and his issue before B yet it is altogether improbable and A may be a young man and have a numerous issue — this is a vested remainder —

2 Wood 181 to 2 184-5 192 Hob 81st
Salk 232 2 Ray 523 8 T R 488-9th

Contra To A in tail with condition that if he survives to the age of 100 it goes to B in remainder

12th Remainder

Here there is hardly a possibility yet it is good —

What then is the Criterion — Ans the

1. uncertainty whether a Rem will vest in interest and not the ~~...~~ uncertainty of ever vesting in possession

2 Wood 192

To A for life Rem to B in tail — is vested but this may never take effect —

But To A for life Rem to B provided he outlives A — here it is conting[en]t — because it is uncertain whether it will ever take effect in interest — which leads to this Criterion —

2 The present capacity of the rem taking effect in possession if the present particular estate should determine makes the difference between vested and con[tingent] Rem —

To A for life Rem in fee tail to B — if A should die B might take immediately —

But To A for life provided B shall pay within such a time 100£ of money — A dies before the money is paid is not good as a vested remainder but is a Contingent Remainder — according to the 2 Rule Conn 142 —

Remainders to two persons for life with
Rem in one event to one and in another
event to another these are called Cross
Remainders - 2 Bac 332 Co L 33 Dyer 303 Comf 31

It is said Cross Rem cannot take effect
if limited to more than two that if there is more
than two Cross remainders
If Rem are to be raised by implication
the presumption is in favour of two if there
is the number but when in favour of
more than two the presumption is against
the raising them -
But this presumption may be rebutted
by evidence to shew the intention to raise
them Comp 780 797 1 Eas 229 2 ac 36 Do
216

It is said Cross Rem cannot be created
by deed - incorrect - cannot be raised
by implication in a deed though they
may in a devise, though if expressed
in deed - good 1 Eas 216

By a Statute of Eliz it may seem that a Free-
hold may be created by deed to commence
in future if granted to a person in
being or to some use of some person

14th now in being — The construction of this stat has been Judicially determined

Stat Con rem ed 243

Thus far of Con Remainders

Executory Devises

There is a species of Rem though not like it, and called in expectancy an Executory devise — 2 BC–172

Old definition — A devise of a future interest not to take effect on the testators death but upon some contingency — This may include a remainder not perfect — 2 BC–172 1 Eq ca ab 186

An Ex Devise or bequest is such a limitation of a future estate as the law admits in wills but not in deeds — Fern 248–308 2 Wood 222 Comp 224th 2 Saund 388 3 Th R 487 708–

If therefore there is such a limitation which by law can take effect as a contingent remainder it never can be construed as executory devise because the law abhors things tending to a perpetuity

Fern 210 382 2 Wood 243 Doug 729–

Executory Devise
Ex Dev are allowed out of indulgence to a man's last will and testament – authorized by Hen 8th –
A testator is always considered inops consilii –

2 Wood 221st Pow on Dev 250

Fearn 299 2 BC 172

The whole law is however of comparatively modern origin – it arose in Queen Eliz reign –

3d FB 93 95 9th

differs from Con Rem in 3 particulars

1 By an Ex Devise a freehold may be made to commence in futuro without any particular estate to support

2 By Ex De a fee may be limited after a fee

3 By Ex De a remainder may be limited after a chattel interest after a life estate in the same subject – 2 BC 173 398 Fearn 303 4th

Salk 229 Pow on Dev 238 280

If a contingent devise is made after a limitation and after some freehold has determined and such particular estate determines upon some before the contingency happens still the devise is good if such estate would have been sufficient to have supported a contingent remainder To A for life; rem to the unborn son of B A dies b/f in the testator – and then the testator dies – C is yet unborn – is good to C if he is born at all –
But if A had died after the death it would have and antecedent the birth of C it would have been different

Fearn 401 418, 9, 20 Talbot 24

Doug 325 4 T Rep 1

16

Executory Devises

This rule is a late rule as you may see by

Fisher 183 Fearn 4161

To A and his heirs to commence on his marriage is good —

To the heirs of A when he shall have an heir is good — nemo heres viventis

In all these cases limitation by deed is not good

Fearn 304. 2 B 2 182

Cruise 225 - 229 Pow on Dev 255 and onward

And in the mean time the estate descends to the heir of the Devisor liable to be defeated upon the happening of the contingency —

Doug 481st 2 Wood 233 1 R B 1 Saund

2 day

A fee may be limited after a fee —

To A and his heirs if he dies to B and his heirs — not good by common law

To A and his heirs if B shall pay to him and his heirs — 2 B C 398 - 2 Wood 181 186

226th Fearn 383

The theory of the law is not that the second limitation after the determination of this one fee but as a substitute for the former fee Pow on Dev 250 - 51 - Fearn 4118 - 10 Mod 120 -

Ent. Devise

17 3d A remainder may be limited after a chattel interest is good —

To A for life to B in fee — is good

2 BC 174 2 W 238,

8 Cok 95 —

No matter how numerous the limitations

2 BC 398 174 Fern 304

8 C 95 1 PW 1 — 10 c 40

All these distinctions relate to the difference of mode in their creation and not to their nature when created —

Fern 300

Dec 4th 1812 Remainders and Executory Devises

Decision of the Quest' A promises to pay to B 100 dolls due from D to B — is this good? In England this would not be good — but here all writings all specialties — if then this promise is the same as a specialty this good — decided to be good by Reeves Gould

4 c his Term rep

In relation to the nature of the two great differences —

A Con Rem may be barred by fine or common recovery An Exec Dev cannot be

For a Con Rem is only a part of the particular estate but an Executory Devise is not —

The Con Rem is connected with and dependent upon the prior limitation —

2 BC 173 Fern 301 3 Mod Ca 543

2 Wood 227 10 Co 52

Hence the period fixing the ultimate limitation on which the Ex Devise must depend because otherwise it would be a perpetuity which

Executory Devise

the law allows -

Fearn 314th 315 2 B C 173 4th T R 310
289th 2 Ward 236th Hatch 219

This rule is so as to take effect within lives or life in being, and 21 and fraction of a year allernwards - fraction of a year is allowed for posthumous children 21 years are allowed for unborn children This time is not to create a perpetuity a fraction of a year is allowed for gestation

Fearn 314 320 356 Hatch 228th
7 T R 100 595 Doug 590

And if the contingency according to the terms of the Devise may extend beyond 21 years and a fraction it is void abinitio -

To the unborn son of the unborn son of A not good - but to the unborn son of A good -

To A and his heirs upon some condition to go to the unborn son of A good

Fearn 314th 320 356
1 Wil 204th 2 B C 174th

To the unborn children of A B & C good

Blackstone lays down a different rule as to a Chattel interest - all the lives must be in being and 21 years afterwards.

2 B C 174 5 Bl Rep 431 Schemur 341

Schem 341
345 Fearn 320 3 T R 463 3 T R 428 Fearn 282 1 R 282
2 P B 421 2 Ward 230th 2 Term Rep 45

Executory Devise
A variety of [illegible] in our books respecting the words [illegible] and [illegible]
[illegible] [illegible] on 820836)
It is true that if the limitation is to take effect after one general issue is void as an Executory devise –
To A and his heirs forever and if he dies without heirs to [illegible] to B as an executory devise perhaps may be an estate tail –
because the limitation is too remote –
An estate tail may be created by implication in a devise – [illegible]
[illegible] 268th
Pemberton 426 [illegible]
822 [illegible] 841st 2 Wood [illegible]

Chattel interest – [illegible]
To it and if he dies without issue to B void because it may not take effect within life or lives in being and 21 years –
Courts of Justice have endeavoured to take the limitation out of these words – without issue –
[illegible] 852 Salk 226th [illegible]
Powell [illegible] 251 [illegible] [illegible] 140
7 [illegible] 622

It is not be understood that a persons dying without issue does not make the limitation void
[illegible] Powell 431st
Salk 234th [illegible] 301 [illegible] 276
Comp 284th

executory Devise
Any limitation tending to a perpetuity is void by way of Devise or Remainder
No limitation can be carried farther than to the unborn son of a person in esse —
Fern 391 2 Th 251 3 Bur 1538
1 P Wms 332
Construed sometimes according to Cy pres
2 T R 248 252
or est
Where a Contingent estate is devised over on a condition annexed to a preceding estate and the preceding estate never takes effect then the limitation over shall take effect —
E.g. A for life remr to D if he shall take the name of B and if he does not to C. D does not then to C — Salk 229 Fern 108 2 Th 470-475
Fern 391 415 18 — 1 Henry B 361 —
1 Bos & Pul 250
To A in tail and in want of issue to B if and A dies before the testator B takes immediately upon the death of A since the prior estate is determined
Doug 323 Plowd 340
2 Fern 722 Prch Chr 422
But if the preceding estate was void on account of its remoteness the limitation after is void of course — because the latter must still be always more remote than the former —

Executory Devise.

2 Fh 251 2 Henry B 362 1 Very 134 Fearne 417

18th

The rule is the same whenever the subsequent limitation is limited upon the prior one and the prior one fails the latter fails also

2 Fh 251st

Lec 3d on ~~[illegible]~~ Executory Devises

Vest Rem are Deviseable Descendable transmissable and in equity assignable.

It will pass to one's personal representatives It may therefore be assignable and it may be conveyed away by deed –

Con Rem and Ex Dev can be assignable only in Equity – whereas vested Rem may be assigned in deed by law –

But if a Executory Remo

'Possibilities clothed with an interest' are called Contingent and Executory devise –

Once doubted whether Ex Dev would descend to the heir and afterwards whether it could be devised – then wh assignable &c

Fearne 286-291-439-401 1 Henry B 30
4 Fh 248th 3 ves 15 488 Pow on Dev 34
2 34 427

But such descent to the heir does not necess

Executory Devise

areby descend to the person who is heir
heir to the remainderman when he dies but the heir who exists
at the time the contingency happens—
For the remainder man may die before
the Contingency happens—

1 Fern 6 218th 9th 2 Wils 29th Fern 241.8

Formerly a distinction between remainder
in personal and real property—but
there is no difference the same rule holds
to both 2 Wood 218th 249th

Contingent Rem or Exec Devise cannot be
granted by law in deed—

2 Wood 187-212 1 Powell on Con 152
Plowd 482 2 136 298th—

Both a Con R. & Ex D. being a freehold
may pass by fine or common recovery
because it must be something real—
This supposes the fine to be levied by the
Devisee himself

2 Woo 186-7 212 238
Croke J. 548 Fern 310 313th

But though these two cannot be conveyed
away by law yet they may be released
to the owner of the Land by deed—for this
is not considered as a conveyance

Ex Devise

2 Wood 213 1 Bery 411 1 Mod 152

May be assigned in Equity—
The assignment must be for a valuable consideration or a consideration in the second degree— — —
A voluntary assignment is never enforced

2 Wood 216 1 Bery 410 2 Ch Ca 68

Events happening before the contingency happen may change the estate to an Executory— for a consideration.
Though the event happens after the Testators death yet if it is limited by words of contingency it may be changed from a contingent Remainder into an Executory devise— because this remoteness is provided for by a limitation in the instrument its Self. Bery 470 & 76 note 2 Bery 248 249
If the first limitation is a executory Devise the others must be so also as to follow it— It is said when the first vest in possession the remainders vest in interest—
This cannot be so if they intend to cases where it depends upon subsequent limitation—

Estates in Reversion -

A Reversion is an estate left in the Grantor to commence after the determination of some particular estate created by him -

Ex. A for 100 years - after this time expires then to revert in the Grantor

2 B C 175 - 2 Wood 172

The reversion exists by operation of law without any reservation in the Grantor -

A remainder must be created by act of the parties a reversion only by operation of law -

2 Wood 173 2 B C 175 n.

But a reversion may be transferred as well as a remainder - when it is vested -

A Con Reversionary interest is not transferable at Law -

2 B C 109 n.

If one grants a life estate to A remainder to the Grantor himself - this is not a remainder but a reversion

2 B C 176 n 2 Wood 178

3 Leo 400 D'Anch Cas. 321

Contra if one grants A for life with reversion to B and his heirs – this is not a reversion but a remainder –

2 B C 176

When rent is reserved in a lease it is incident to the reversion – that is it follows the reversion – 1 Inst 143 2 B 174 176

But not inseperable incident to the reversion for by special words the one may pass without the other –

2 B C 176 1 Inst 151 b

It is said if one makes a lease a reversion cannot be granted before the Consequences founded upon the doctrine of attornment and therefore now abolished

2 Wood 173-4 for the old rule

Little Cont an 507

Attornment never prevailed here –

A reversionary interest may be created by the word land – as where grantor has only a reversionary interest in land –

2 Wood 172 10 C 167

24 Jany

Reversion –

Before the Statute of passes a freehold reversion could not pass unless by fine with attornment or by recovery with attornment –

the reason was because this estate will not be conveyed by feoffment that is by livery of seisin since it was not in possession

A Rev of years might at Com. law been transferred without deed - for it was a chattel interest and livery of seisin being unnecessary

2 Wood 174 Litt. sec 567 Perk

sec 61 Cro. Charles 143

Perkins a very valuable book very scarce -

A devise of a rev is good without an attornment

2 Wood 175 note Perkins sec 557

So may any particular part of a reversion of it be granted away - a particular estate with limitations over may be granted in a reversion as well as an estate in possession -

To A for years - B for life - C in tail - D in fee

2 Wood 174, 5

And there may be a reversion of a chattel interest as of a fee -

Thus A having a term for years viz 50 may convey it away for 20 years and then it will revert to him again ~~in fee~~ - for the 30 years

3 Leo 154, 5 2 Wood 175

An estate tail does not exhaust the whole fee - however the reversion is so remote in prospect that the law deems it of no value whatever

Reversion

The reversion may be docked by a tenant in tail and the issue may continue forever so that it is really of little worth — and is not considered as assets at all — Pen on Mort 433 8 PW 235th —

When a greater and lesser estate meets in the same person without any intermediate estate the less is merged in the greater — or drowned or sunk or swallowed up

A tenant for years purchases the ~~fee~~ reversion and became tenant in fee
2 B C 177 — 8th Croke Eliz 302
8 Leavins 437th

But to effect this merger ~~the~~ two estates must meet in one and the same person in one and the same right —
Plowd 418 2 B C 177 Coke Lit 1338
Croke James 275 — exception

when the estate tail meets the reversion — no merger because here there can be no surrender which is necessary and a tenant in tail cannot ~~fea~~ destroy the estate by fine or recovery 2 Coke c 61st & Coke 74th Croke Eliz 302
2 B C 177 —

End of Reversion — by James Gould

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